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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 31 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Monday, June 24, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Frank Sheridan				
(By Ms. Little)	36-4		36-57	
(By Mr. Lally)		36-33		
Daniel Michael Wolfe				
(By Mr. Jackson)	36-59		36-132	
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P R O C E E D I N G SJune 24, 2024

(Court in session at 9:06 a.m.)

(Defendant present. Jury present.)

THE CLERK: 22-117, Commonwealth versus
Karen Read.

THE COURT: All right. Good morning, counsel.
Good morning, Ms. Read.

Good morning, jurors. I need to ask you those
three questions. Were you able to follow the
instructions and refrain from discussing this case
with anyone since we left here on Friday?

Everyone said "yes" or nodded affirmatively.

Were you also able to follow the instructions
and refrain from doing any independent research or
investigation into this case?

Everyone said "yes" or nodded affirmatively.

Did anyone happen to see, hear or read
anything about this case since we left here on
Friday?

Everyone said "no" or shook their heads.

Thank you very much.

All right. Mr. Jackson? Ms. Little?

MS. LITTLE: Good morning, Your Honor. The
defense calls Dr. Frank Sheridan.

1 Whereupon,

2 FRANK SHERIDAN

3 having been first duly sworn, was examined and
4 testified under oath as follows:

5 THE COURT: Good morning, Doctor.

6 THE WITNESS: Good morning.

7 THE COURT: I'm going to ask you to, when you
8 testify, sir, please speak into the microphone if
9 you can loud and clear.

10 THE WITNESS: I will. Okay.

11 THE COURT: Thank you.

12 THE WITNESS: Is it working?

13 THE COURT: It should be. All right. Thank
14 you.

15 All right, Ms. Little.

16 MS. LITTLE: Thank you.

17 DIRECT EXAMINATION

18
19 BY MS. LITTLE:

20 Q Good morning. Can you state your first name
21 and spell your last name for the record, please?

22 A My first name is Frank and the last name is
23 Sheridan, S-H-E-R-I-D-A-N.

24 Q And if you could make sure to keep your voice
25 up just because the air conditioner is very loud.

1 A Yes. I noticed that. Okay. Yes. Okay.

2 Q Dr. Sheridan, what is your profession?

3 A I am a physician and my specialty is forensic
4 pathology and neuropathology but most of my career has
5 been primarily forensic pathology.

6 Q What do you currently do for a living?

7 A Nothing. I'm retired.

8 Q What role or position of employment did you
9 hold before you retired?

10 A Okay. I was the Chief Medical Examiner for
11 San Bernardino County, California, and I was in that
12 position from 1991 until 2017. That's when I retired
13 from that position, but I stayed on on a part-time
14 basis for another few years to help out because the
15 office was understaffed.

16 But a few years ago, 2021 or '22 -- I've lost
17 track of the time -- I finally stopped altogether.

18 Q And, Dr. Sheridan, if you could just pull the
19 microphone a little bit closer?

20 A I'll pull myself closer to it, I guess. Yes.
21 Okay. Is that better?

22 THE COURT: Ms. Little, if we need to, just
23 let us know and we'll turn off the air
24 conditioning.

25 MS. LITTLE: Thank you, Your Honor.

1 BY MS. LITTLE:

2 Q Could you describe your educational background
3 for the jury?

4 A Yes. I was born and raised in Dublin, Ireland
5 and I had all my initial education there including
6 primary school, secondary school and then premedical
7 school at the university I was at, the University
8 College of Dublin, Ireland, which is part of the
9 National University of Ireland system. So I did my
10 premed and medical school training there, and I
11 graduated from medical school in 1971.

12 After that, I did a one-year rotation
13 internship, as it's called, of medicine, surgery and
14 some psychiatry, as well. That was a requirement for
15 all doctors for licensure. So that's basically my
16 initial education.

17 Should I go on with my C.V. or not?

18 Q Yes. What did you do after medical school to
19 complete your training?

20 A Well, in the years after medical school, I
21 wasn't in training anymore. I was working in Africa,
22 actually, as a medical officer. And that wasn't
23 training. That was a job. And I was there for three
24 years in Central Africa, and I was a general medical
25 officer with various duties that included some teaching

1 but also seeing patients. So I did that for basically
2 three years.

3 I then returned to Ireland, and I speak the
4 next two years -- we're now talking about, by the way,
5 the years I'm about to mention are 1976 to '78. So I
6 was back in my home country, Ireland, and I spent those
7 two years doing research and lecturing in pharmacology.
8 Pharmacology is the study of drugs and how they act in
9 the body. And I did that back at the same university
10 where I had originally trained for medical school.

11 So then in 1978, I came to the United States
12 initially to the University of Oregon and I spent the
13 next almost three years doing research there and
14 lecturing in the field of genetics. It was during the
15 time that I was there that I decided to do forensic
16 pathology.

17 So starting in 1980 -- let me think for a
18 second -- 1982, I then had to start a residency program
19 in pathology. And the first part of that, the first
20 year of that, was in Loma Linda University Medical
21 Center in Southern California. I then had to interrupt
22 my residency training, and I had to go work in family
23 practice for a year. This was because I was going
24 through the immigration system of the United States,
25 and they required that people in my position work for a

1 year in family practice in a manpower shortage area as
2 they designated it, an area where there weren't enough
3 doctors.

4 So I did that in a place called Yucca Valley,
5 Y-U-C-C-A, Valley, California but then after that year
6 I returned to the residency program and continued on at
7 Loma Linda University Medical Center. And this
8 training was called anatomic pathology which, in a way,
9 you can think of it as general pathology. It involves
10 autopsies. It involves surgical pathology, looking at
11 slides from surgery. It involved a few other things,
12 as well.

13 And so I was doing that there at Loma Linda.
14 Then from '86 to '88, I went to Los Angeles County USC,
15 which stands for University of Southern California. So
16 LA County USC, as it's generally known, for two years
17 of training in neuropathology, neuropathology being
18 disease and injury of the brain, spinal cord and so
19 forth. So that was from '86 to 88.

20 And then in 1988, I went to the coroner's
21 office, as it was then called. It's now a sheriff
22 coroner's office. But, at that time, it was a
23 coroner's office in San Bernardino. I did my one-year
24 required training in forensic pathology there.

25 When I finished that year, I stayed on at the

1 same office. And then at 1991, I was appointed chief
2 medical examiner for the county. And, as I mentioned
3 earlier, I was in that position up until 2017.

4 I am board certified in anatomic pathology
5 which I mentioned before is general pathology, in a
6 sense; also neuropathology as I mentioned about the
7 brain and the spinal cord primarily, and then finally
8 forensic pathology.

9 Q In other words, Dr. Sheridan, you're triple
10 board certified; is that correct?

11 A I am, yes.

12 Q And that's in anatomic pathology,
13 neuropathology and forensic pathology?

14 A That's correct. Yes.

15 Q Can you describe any relevant teaching
16 positions that you've held?

17 A Yes.

18 Q If you could keep your voice up. I'm sorry.
19 It's hard to hear back here.

20 A Okay. I'm sorry. Yes. I still do some
21 teaching, actually. First of all, I'm on the staff of
22 Loma Linda University Medical Center, the place where I
23 did my initial training, and I give lectures on a
24 regular basis there to the pathology residents like I
25 used to be myself.

1 In addition to that, for a long time, for
2 about 20 years, actually, up until COVID, I was also
3 giving annual or actually twice a year courses on
4 forensics at the University of California, Riverside
5 Extension, as it's called. And I did that, as I said,
6 for essentially 20 years, I think. That stopped with
7 COVID. So I haven't been doing that since the
8 beginning of the COVID epidemic.

9 I've also given annual lectures or not
10 lectures or courses, three-day courses, to the
11 California Criminalistics Institute, which is part of
12 the forensic system in California.

13 And then in addition to that, I was associated
14 with another university for awhile but that sort of
15 lapsed. That is basically it. I give occasional
16 lectures at or actually at least one a year at various
17 other places, just individual lectures. I'm a visiting
18 lecturer, in other words, at community colleges and
19 even high schools, actually.

20 I forgot to mention one more thing. For two
21 years, I was a visiting professor at a university in
22 China in Hangzhou -- I don't know if I'm pronouncing it
23 correctly -- but Hangzhou, H-A-N-Z-G -- whatever. It's
24 a big city in China, and I was there for two years, two
25 different years, I mean, giving courses on forensic

1 pathology.

2 Q And, Dr. Sheridan, are you a member of any
3 academic or any professional societies?

4 A Of societies? Yes. I've been a member,
5 although I've let it lapse recently intentionally. But
6 I've been a member of the National Association of
7 Medical Examiners for many years. I'm also a member of
8 the American Academy for the Advancement of Science and
9 also the American Forensic Institute or the AFSS, the
10 American Academy of Forensic Science.

11 Q And have you authored any peer-reviewed
12 articles or publications in the areas of forensic
13 pathology or neuropathology?

14 A Yes, but not recently. When I was working, I
15 was too busy to publish. But yes. I did author a few
16 papers earlier on in my career, one of which -- it
17 wasn't in neuropathology but it was urology more than,
18 well, it was actually neuropharmacology. And then I
19 did author another paper that was related to my
20 forensic pathology work, organ donation, organ and
21 tissue donation for transplantation. Those are the two
22 main ones, but there were a couple of other lesser
23 papers.

24 Q Can you describe your duties as the Chief
25 Medical Examiner of San Bernardino County?

1 A Yes. As chief medical examiner, I had some
2 administrative responsibilities, fortunately, not too
3 many, because there were other people to do it. But
4 most of my responsibility there was supervising the
5 medical part of the coroner's office, in other words,
6 the autopsy section, and I was supervising other
7 pathologists. But I was also working full-time doing
8 autopsies, myself. So I spent most of my time,
9 actually, performing autopsies, but I did have, as I
10 said, administrative roles supervising colleagues.

11 And, of course, as a medical examiner, as
12 forensic pathologist, I frequently had to testify in
13 court, rather like I'm doing now. So that was another
14 part of my duty.

15 Q And, during the course of your professional
16 experience, approximately how many autopsies do you
17 believe you've conducted?

18 A It's between 12 and 13,000. I think it's
19 closer to 13,000.

20 Q And have you qualified as an expert in the
21 area of -- as a forensic pathology, neuropathology and
22 anatomic?

23 A In courts, yes. Yes, about over 400 times.

24 Q How many was that?

25 A Over 400.

1 Q And did you review materials related to this
2 case in furtherance of coming to an opinion and
3 conclusion about Mr. O'Keefe's injuries?

4 A Yes, I did. I reviewed quite a lot of
5 materials.

6 Q What did you review?

7 A Okay. I reviewed the autopsy report on this
8 case. Along with that, there was the neuropathology
9 report which was separate. There was a toxicology
10 report. There were autopsy photographs. These were
11 all of primary importance to me, all these things.

12 I also reviewed the complaint in this case,
13 outlining, in other words, the basic details of the
14 case. I reviewed photographs taken at the scene, the
15 scene of death, of Mr. O'Keefe; photographs of the
16 vehicle that was allegedly involved in his death;
17 photographs of the decedent, himself, before the
18 autopsy while he was at the hospital, the Good
19 Samaritan Hospital. And there was also some videos of
20 the scene of death. I also saw the death certificate,
21 a document by SERT, S-E-R-T; police reports from the
22 Canton Police Department.

23 Am I missing anything? I don't think so.

24 MS. LITTLE: Your Honor, permission to publish
25 what's been previously marked as Exhibit 19?

1 THE COURT: Sure.

2 BY MS. LITTLE:

3 Q Dr. Sheridan, is this one of the photographs
4 that you reviewed in reaching your opinions and
5 conclusions in this case?

6 A Yes. Yes, it is.

7 Q Can you describe the injuries that you see in
8 this photograph?

9 A These injuries that you're looking at here on
10 the arm are abrasions, which are friction injuries,
11 basically. We classify them under the general category
12 of blunt force injury, but these particular ones are
13 abrasions, the abrasions being where the outer layer of
14 the skin, the epidermis, as it's called, has been
15 scraped off. These are friction injuries, essentially.

16 Q And, based on your review of the information
17 discussed earlier as well as your review of these
18 photographs, can you tell whether these injuries were
19 sustained before or after death?

20 A These injuries were sustained before death.
21 We call them antemortem, A-N-T-E, mortem meaning before
22 death. And that's based primarily on their color. And
23 you have to take other things in consideration, but
24 that's the bases of it. If these had been postmortem,
25 they would have more yellowish-orange color, usually

1 yellow.

2 Q In your professional opinion, based on a
3 reasonable degree of scientific certainty, are those
4 injuries consistent with being struck by a vehicle
5 while holding a drinking glass?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 MS. LITTLE: May we approach, Your Honor?

9 THE COURT: Sure.

10 (Whereupon, there was a sidebar conference as
11 follows:)

12 THE COURT: Okay. So state your objection.

13 MR. LALLY: My objection is to what scientific
14 as well as -- I don't know that the foundation has
15 been laid as to --

16 THE COURT: I sustained it based on both of
17 those. So build a foundation.

18 (Whereupon, the sidebar conference concluded.)

19 THE COURT: Doctor, I am going to take this
20 opportunity to ask you again to keep your voice up,
21 please, sir.

22 THE WITNESS: I will do my best. My voice is
23 not as strong as it used to be.

24 THE COURT: We will stop the AC for a while
25 then. We will stop the air conditioning for a

1 while then. We want to make sure we hear you.

2 THE WITNESS: Okay.

3 BY MS. LITTLE:

4 Q Dr. Sheridan, are these injuries consistent
5 with a motor vehicle accident in your opinion?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 THE WITNESS: I would say, in general, no.

9 THE COURT: Sir, that objection was sustained.

10 I think Ms. Little is going to put it to you in a
11 different way.

12 THE WITNESS: That's fine.

13 BY MS. LITTLE:

14 Q If you could assume for purposes of this
15 question that this individual was involved in a motor
16 vehicle collision as a pedestrian, based on your review
17 of these photographs, are those injuries consistent
18 with having been struck by a vehicle?

19 MR. LALLY: Objection.

20 THE COURT: Sustained. Why don't you come
21 back for a minute.

22 (Whereupon, there was a sidebar conference as
23 follows:)

24 THE COURT: Same objection?

25 MR. LALLY: Yes.

1 THE COURT: Build a foundation. Okay?

2 (Whereupon, the sidebar conference concluded.)

3 BY MS. LITTLE:

4 Q Dr. Sheridan, how many autopsies have you
5 conducted on individuals who were involved in
6 pedestrian vehicle motor collisions?

7 A Involved in pedestrian vehicle --

8 Q Yes.

9 A Yes. Well over 100.

10 Q What other experience do you have in terms of
11 conducting autopsies with individuals who have been
12 involved in motor vehicle collisions?

13 A Well, I mean, if you take motor vehicle
14 accidents in general, they'd be probably nearly a
15 quarter of my total number of autopsies. So in other
16 words, that would be close to 3,000. Yeah. That's
17 about right.

18 Q Based on your professional experience, what is
19 your opinion regarding whether those injuries are
20 consistent with a pedestrian being struck by a motor
21 vehicle?

22 MR. LALLY: Objection.

23 THE COURT: I'm going to allow it. You can
24 answer that, Doctor.

25 THE WITNESS: Hum?

1 THE COURT: Can you answer that?

2 THE WITNESS: I can answer it, yes.

3 THE COURT: So go right ahead, sir.

4 THE WITNESS: Okay. The question was, to be
5 precise? Can you rephrase it? I mean, I said,
6 yes, I can answer it; but I can't remember exactly
7 how you phrased it.

8 BY MS. LITTLE:

9 Q Yes. Based on your extensive training and
10 experience, what is your opinion regarding whether
11 those injuries are consistent with being struck, with
12 an individual being struck by a vehicle?

13 A If you mean struck in that part of the body,
14 on the arm directly --

15 Q Yes.

16 A -- I would say, no, it doesn't look like that
17 at all.

18 Q And can you explain that?

19 A Well, if you are hit by a vehicle, whichever
20 part of your body is hit, if it's a significant impact
21 at all, you're going to get bruising, and we don't have
22 any bruising here. We just have linear, what I'd call
23 linear abrasions without any bruising.

24 So that does not look to me at all remotely
25 like an impact from a motor vehicle.

1 Q What would you expect to see if an
2 individual's arm was struck by the rear of a motor
3 vehicle?

4 A Well, as I just said a second ago, primarily a
5 lot of bruising. And that's what we don't see here.
6 You might see -- well, depending on the circumstances,
7 you might see other things like a fracture or
8 fractures. But you would at least expect bruising.

9 Q In your professional opinion based on your
10 many years of experience, have you conducted any
11 autopsies involving individuals who were involved in
12 any sort of animal attack?

13 A Animal attacks in general, yes. Quite a few,
14 actually. When I say "quite a few," it's not an
15 enormously common event, but I've done probably at
16 least a dozen or so involving deaths where an animal
17 was involved one way or another.

18 Q Have you conducted any in which an individual
19 was attacked by a dog?

20 A Yes, I have. A few.

21 Q Can you describe that for the jury?

22 A Well, I'd have to just refresh my memory out
23 of the blue here. But, first of all, I had a number of
24 cases, three or four, I think, over the years involving
25 children, primarily children, who were killed by feral

1 dogs and the dogs attacked the kids, the kid, and
2 killed them. So I had that a few times.

3 But then I've also had cases where an animal
4 or a dog, particularly, was involved but wasn't the
5 actual cause of death, so to speak, but they were
6 involved in something that was happening and left some
7 traces of their activity in the form of bite marks or
8 scratch marks.

9 Q In your professional opinion, are those
10 injuries consistent with an animal attack?

11 A Are they consistent with what?

12 Q An animal attack.

13 A I would say they are, yes. I'm not 100
14 percent sure, but my initial reaction when I saw this
15 photograph was that it was probably an animal or most
16 likely I would say a dog, scrape marks with paws,
17 Possibly also a bite mark from the teeth, as well,
18 possibly. I'm not 100 percent sure. I didn't get a
19 chance to analyze it right there on the spot, so to
20 speak. But my basic impression is that these are
21 consistent with marks caused by say a dog using his
22 paws or claws, if you want to put it that way and
23 possibly teeth, as well.

24 Q There is a pointer up there. Would it be
25 possible to direct the jury to the injuries that you're

1 referring to on the screen? There should be a little
2 laser pointer up there.

3 A I don't really see one.

4 THE COURT: It's not there.

5 MS. LITTLE: May I approach, Your Honor?

6 THE COURT: Sure.

7 BY MS. LITTLE:

8 Q Using the laser pointer, could you indicate
9 the injuries that you believe you just testified are
10 consistent with scratch marks?

11 A Actually, in a sense, they are all consistent
12 with scratch marks in sort of the more generic sense of
13 whether it's the paws or the teeth. They are going
14 across the skin rather than going straight into it. So
15 all of these marks are generally consistent with if you
16 want to call them scratch marks.

17 I don't know if this will work on the screen,
18 but you've basically got what looks like this one pair
19 there and possibly a third one and one in the middle.
20 There are two very clear parallel marks there with
21 another one fainter in the center.

22 Then going closer to the elbow, you've got
23 another two or three, whichever way you look at that.
24 At the elbow, itself, you have -- that's that part of
25 the elbow there is what I would think is the most

1 likely candidate here for a bite mark, which is it has
2 something of the configuration of the outline of teeth.

3 And then the ones on the forearm are a little
4 bit less obvious, but they are still consistent in
5 general with, I would say, claw marks and/or maybe from
6 the teeth.

7 Q Dr. Sheridan, if you assume if the decedent
8 was standing with his arm extended in this manner and
9 he was struck with a rear taillight of a 7,000 pound
10 Lexus only on the arm such that it spun him around and
11 propelled him 30 feet, do you have an opinion as to
12 whether or not these arm injuries are consistent with
13 that scenario?

14 MR. LALLY: Objection.

15 THE COURT: All right. I'll see you at
16 sidebar.

17 (Whereupon, there was a sidebar conference as
18 follows:)

19 THE COURT: What is the nature of the
20 objection?

21 MR. LALLY: The nature of the objection is the
22 nature of the hypothetical, two occupants, asking
23 -- as far as using a hypothetical, whatever, I
24 don't think it is appropriate.

25 THE COURT: Well, if the jury finds the facts

1 of the hypothetical beyond a reasonable doubt, then
2 why isn't it admissible?

3 MR. LALLY: Again, I don't know that this
4 witness has expertise in that area as far as --

5 THE COURT: So this is one of those that
6 crosses the boundary of medical engineering -- an
7 engineer could help you from physics -- so I don't
8 know that -- could you review the question?

9 MS. LITTLE: Sure. Assume the --

10 THE COURT: Hold on.

11 MS. LITTLE: Assume the decedent was standing
12 at --

13 THE COURT: Slow down. You come close to him.

14 MS. LITTLE: Assume the decedent was standing
15 with his arm extended out and was struck only in
16 the arm with a rear taillight of a 7,000 pound
17 Lexus at 24 miles per hour and essentially spun him
18 around and propelled him 30 feet. Do you have an
19 opinion as to whether or not these arm injuries are
20 consistent with that scenario.

21 The testimony -- testified that the decedent
22 was standing with his arm like that. He testified
23 it struck a 7,000 pound vehicle, a Lexus -- he
24 testified if it was traveling at 24 miles per hour
25 -- then he was propelled -- that was the

1 Commonwealth's witness's testimony.

2 THE COURT: What do you say about that,
3 Mr. Lally?

4 MR. LALLY: Well, it is --

5 THE COURT: I'm not going to go back and check
6 the testimony. So what was your question again?

7 MS. LITTLE: Assume the decedent was standing
8 with his arm extended in this manner and was struck
9 on the arm with a rear taillight of a 7,000 pound
10 Lexus traveling 24 miles per hour. I can stop it
11 there.

12 THE COURT: Does that work for the
13 Commonwealth?

14 MR. LALLY: It does. I mean, I also don't
15 recall Trooper Paul. Again, I think it was in
16 response to a question by Mr. Jackson along the
17 same scenario as far as his arm extended and all
18 those questions about the shoulder and everything
19 else. But I don't think that Trooper Paul --
20 position of Mr. O'Keefe's arm at the time he was
21 struck.

22 MS. LITTLE: It was --

23 THE COURT: But I don't know what came in or
24 what didn't. All right. I will give you that, but
25 I'm going to also instruct. Okay? I just need a

1 minute to get my instruction. Ms. Little, I need
2 about five minutes or so. I am going to excuse the
3 jury.

4 (Whereupon, the sidebar conference concluded.)

5 THE COURT: Jurors, we are going to send you
6 out for a very short recess.

7 (Whereupon, the jury is escorted from the courtroom
8 and a brief recess is taken.)

9 (Court resumes.)

10 (Defendant present. Jury not present.)

11 THE COURT: So I'll see counsel.

12 (Whereupon, there was a sidebar conference as
13 follows:)

14 THE COURT: It's going to take a little while
15 to find and write what I need. I'll just deal with
16 it in my final jury instructions. I'd like both
17 sides to propose a limiting instruction for this.
18 So go ahead with the first of that question at
19 least that you would stop at. I'll allow you to do
20 that.

21 MS. LITTLE: Perfect. Thank you, Your Honor.

22 THE COURT: The Commonwealth's objection is
23 noted.

24 MR. LALLY: Thank you, Your Honor.

25 (Whereupon, the sidebar conference concluded and

1 the jury is escorted into the courtroom and is
2 seated in the jury box.)

3 THE COURT: Go right ahead, Ms. Little, in a
4 loud voice.

5 BY MS. LITTLE:

6 Q And, Dr. Sheridan, I'll ask you also to keep
7 your voice up for this question.

8 A I'll try.

9 Q Okay. Assuming the decedent was standing with
10 his arm outstretched like this and was struck by the
11 rear of an SUV only in his arm at 24 miles per hour,
12 are the injuries in Exhibit 19 consistent with that
13 scenario?

14 A No. I do not think so.

15 Q Can you describe that?

16 A Well, as I think I have already mentioned
17 before, one thing that's not there that should be there
18 given that scenario is there should be bruising, at
19 least bruising, if not perhaps even more than that but
20 bruising for sure.

21 Secondly, just the appearance of these
22 injuries, they are pattern, if you wanted to call it
23 that. The way they're distributed doesn't seem to fit
24 the idea of the rear of a vehicle being the impacting
25 object.

1 Q At 24 miles per hour, would you expect to see
2 fractures or breaks in the arm?

3 A You could. There would be other factors
4 involved as to -- it would depend on a lot of things
5 but it's possible, yeah.

6 Q I would like to direct your attention to the
7 jury that Mr. O'Keefe sustained to his head. Do you
8 recall that injury?

9 A To the head?

10 Q To the head.

11 A Yes.

12 Q Could you describe that injury for the jury?

13 A There were a few minor injuries on the face
14 but the major injury and, indeed, the main cause of
15 death was an impact to the back of the head, slightly
16 to the right of the midline of the back of the head and
17 where there was a laceration. A laceration is another
18 type of blunt force trauma, but this is -- a laceration
19 is where the skin has actually opened up or is split so
20 you get bleeding from a laceration.

21 So there was a laceration, as I said, in the
22 back of the scalp in what's called the occipital area
23 and beneath that, when the skin was moved away as part
24 of the autopsy, there was extensive bruising,
25 hemorrhage, in other words, in the scalp at that same

1 point. There was a fracture that started at that point
2 in the scalp but traveled all the way forward to the
3 frontal areas of the scalp.

4 So you have the impact to that site is clear
5 because, as I said, you've got the laceration. That's
6 where the impact was. So you have the impact with the
7 scalp hemorrhage there and the skull fractures.

8 Then the brain, itself, had injuries,
9 significant injuries. First of all, there was bleeding
10 on the surface of the brain, and that's very common in
11 situations like this. But, in addition to that, there
12 were extensive bruises, contusions is the real word,
13 actually, but they are essentially bruises of the brain
14 substance, itself, and they were in several different
15 parts of the brain, including the frontal areas which
16 are near the forehead and also the temporal, which are
17 towards the side, more or less.

18 And then there was also hemorrhage deep inside
19 the brain in what's in the ventricles, which are open
20 areas in the center of the brain. All of these things
21 were described in the neuropathology report, and you
22 can see them in the photographs that were part of the
23 neuropathology report as well as the autopsy.

24 Because of or as a result of, I should say,
25 the injury to the brain, the brain began to swell. And

1 that's what it usually does after major trauma. And,
2 as a result of the swelling, you had what was called
3 skull herniation, where the brain -- if you want to
4 think of it this way, the brain is trying to expand but
5 it can't because the skull is around it. So it begins
6 to put pressure, pushing, especially downwards, towards
7 the top of the spinal cord. And, eventually, as
8 happened in this case, it's quite clear from the
9 photographs, the brain herniated downwards at the
10 brainstem, particularly, herniated downwards. And this
11 would have been the final straw, so to speak. That's
12 what would lead to respiratory failure and death. So
13 this was a fatal injury, for certain.

14 Q And what impact would that type of injury have
15 had on the individual after sustaining it?

16 A Once this injury occurred, once this impact
17 occurred, Mr. O'Keefe would have been unconscious. He
18 would still be capable of breathing for a while until
19 that brain swelling took over and pushed the brainstem
20 down. But immediately at the point of impact, he would
21 have been unconscious for sure.

22 Q Would he have been able to stand up and be
23 able to walk?

24 A No. He would have been unconscious
25 completely.

1 Q Do you have any opinion regarding whether that
2 injury is consistent with having been struck on the
3 ground on dirt or grass?

4 A I'm sorry. I didn't quite get the question.

5 Q I'll rephrase it. That was a poorly worded
6 question.

7 Is that injury consistent with striking dirt
8 or grass?

9 A Like, for example, falling onto the grass?

10 Q Yes.

11 A No. I don't think so. If there is a fall
12 involved here, and there could be, it would be onto a
13 hard surface. But the grass -- as I understand from
14 all the material I reviewed, there was also some snow.
15 So that might even cushion the impact even a little bit
16 more. But, even without the snow, grass is basically
17 too soft for somebody falling and hitting their head on
18 it to get the injuries I've just described.

19 Q In addition to focusing on the injuries that
20 were present, what significance do you place on the
21 absence of injury in the autopsy?

22 A What significance do I place on what?

23 Q In addition to focusing on the injuries that
24 are present, what significance do you place on the
25 absence of injuries when conducting an autopsy?

1 A Well, as you put it there, it's a rather
2 general question. But, I mean, when you are doing an
3 autopsy, you obviously want to see what is there and
4 what's not. And everything can be relevant, including
5 absent things.

6 Now, in this particular case, there are a
7 number of features of things that are absent that are
8 important. I've already alluded to one and that is on
9 the arm. If that was an impact from the vehicle, I
10 would expect bruising.

11 Do you want me to continue?

12 Q Yes.

13 A But if Mr. O'Keefe was struck with -- it
14 depends, obviously, on what part of the body is
15 involved. But if a vehicle hits you, whether it's the
16 back of the vehicle or the front, you're going to have
17 -- as long as it's not going extremely slowly, if it's
18 going at any speed at all, any significant speed, it's
19 going to cause at least bruising.

20 In this particular case, one of the things
21 that struck me was that there was a distinct absence of
22 bruising on the torso, you know, the chest, abdomen,
23 hips, whatever. And, also, in most cases that I've
24 ever been involved in where a person, a pedestrian, was
25 hit by a vehicle, there are injuries on the legs,

1 including fractures, which are very common on the legs.

2
3 So the absence of all of these things in this
4 case, I think, is important.

5 Q Have you conducted autopsies involving
6 individuals who are involved in fights or altercations?

7 A Yes. Many, many times.

8 Q Approximately how many?

9 A Gosh. I have no idea. It's been a lot. I
10 mean, I've done -- I said earlier between 12 -- over
11 12, maybe 13,000, a lot of autopsies. Of those -- I'm
12 only giving you estimates here, but over a thousand
13 would have been homicides. Of those, probably maybe a
14 fifth or about 200 would have involved blunt force
15 trauma instead of, for example, a firearm or something
16 like that. And, in those cases -- yes. Okay. So all
17 of those and other cases involving homicides involving
18 sharp force may have evidence of a struggle, as well.
19 So it's in the hundreds.

20 Q In your expert medical opinion, are
21 Mr. O'Keefe's injuries consistent with a fight or a
22 physical altercation?

23 A In a general sense, they can be. They could
24 be, yes. He had -- I alluded to it just briefly
25 before, but the head injury, the major head injury I've

1 described. But he also had a laceration over his right
2 eyelid. He had some scrape marks on his face. He also
3 had some bruises on the back of his right hand which
4 that kind of injury on the hands can be what we call a
5 defensive injury, in other words, an injury that occurs
6 when you're protecting yourself and you're hit either
7 with another fist or with a hard object and you're
8 protecting yourself.

9 So I would say that some of these findings are
10 just consistent -- mentioned are consistent with the
11 possibility of a physical altercation. Yes.

12 MS. LITTLE: Thank you. If I could have one
13 moment?

14 THE COURT: Sure.

15 MS. LITTLE: No further questions.

16 THE COURT: Okay. Mr. Lally?

17 MR. LALLY: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LALLY:

20 Q Good morning, Doctor.

21 A Good morning.

22 Q The injury that you were just testifying about
23 regarding Mr. O'Keefe, they were on his right knee, his
24 right arm, as well as the back right side of his head;
25 is that correct?

1 A Yes. I forgot to mention the knee, but yes.
2 There were injuries in those places, yes.

3 Q And understandable, but this isn't an autopsy
4 you performed yourself, correct?

5 A I did not perform myself, no.

6 Q You never saw the body. You're looking at
7 photographs and reports, correct?

8 A Yes. I'm going by the photographs and the
9 autopsy report. Yes.

10 Q And within the materials that you reviewed,
11 did you ever look at Mr. O'Keefe's medical records from
12 the Good Samaritan?

13 A Look at whose medical records? Mr. O'Keefe's?

14 Q Yes.

15 A I looked at the medical records from Good
16 Samaritan Hospital where he was pronounced dead. Yes.

17 Q Okay. So you did look at those, as well?

18 A I did look at those. Yes. I thought I
19 mentioned it earlier.

20 Q Now, with regard to what you reviewed of
21 Mr. O'Keefe's injuries, you saw no injuries to his left
22 arm, correct?

23 A To his left arm? No. I don't think so. No.

24 Q No injuries to his left leg, correct?

25 A No.

1 Q No injuries to his torso that you saw?

2 A That's correct. Uh-huh.

3 Q And no injuries to the back left side of his
4 head; is that correct, as well?

5 A That's correct, yes.

6 Q Now, you indicated that you observed or viewed
7 the autopsy reports as well as autopsy photographs and
8 the death certificate, correct?

9 A I did, yes.

10 Q Now, do you support Dr. Scordi-Bellow's
11 determination as to the cause of death being multiple
12 blunt force type injuries in conjunction with
13 hypothermia?

14 A I do. I do agree with her, yes.

15 Q And you reviewed also the neuropathology
16 report by Dr. Stonebridge?

17 A I did, yes.

18 Q And do you agree or concur with the findings
19 of Dr. Stonebridge contained within that report?

20 A Yes. There were photographs taken during the
21 neuropathology examination which were independent
22 confirmation for me of the things described in the
23 report. Yes.

24 Q Now, with regard to autopsies that you
25 performed in the past -- well, let me ask you this

1 first: As far as the injuries that you observed in the
2 photographs to Mr. O'Keefe's right arm, they were not
3 the cause of Mr. O'Keefe's death, correct?

4 A No, they were not.

5 Q With regard to autopsies that you performed in
6 the past in regard to there being some sort of animal
7 involved that you were testifying before, is it normal
8 to see just injuries related to an animal attack on
9 just one portion or one piece of body?

10 A Yes, in general. As I mentioned, I think,
11 when I was answering the question about the cases I've
12 done involving animals, I try to divide them into two
13 groups because there is an important difference. Some
14 of those cases were cases where the animals were
15 responsible for the death, itself. As I said, a bunch
16 of feral dogs in one case in particular. Another was a
17 case where it wasn't a whole bunch of them but there
18 were two dogs, large dogs. And they killed the
19 victims, children.

20 So those individuals had multiple injuries,
21 including deep bite marks that were fatal, particularly
22 in the neck area. But they also had -- and I'm
23 stretching my memory a bit because it's a while since I
24 did these cases. But I do have a general recollection
25 that in at least -- in those cases, I should say, in

1 addition to the fatal injuries, there were also some
2 nonfatal things like paw marks and I can't remember the
3 distribution, though, on the body.

4 Q Do you remember as far as whether or not these
5 injuries that you observed, and not taking the child
6 fatalities with the dog's mauling, I'm presuming that
7 those involved injuries to significant and extensive
8 parts of the body; is that correct?

9 A Yes. The ones with the animals caused the
10 death. Yes.

11 Q So in the other instances that you were
12 talking about, do you recall even whether or not those
13 injuries that you observed were antemortem or
14 postmortem?

15 A I'm sorry. I couldn't hear the last part.

16 Q The other ones that you were talking about as
17 far as the other animal attacks that you've seen --

18 A Yes.

19 Q -- do you recall whether or not the injuries
20 that you observed in those instances were antemortem or
21 postmortem?

22 A Antemortem. Well, actually, in one of the
23 cases that comes to mind, the marks appeared to be
24 postmortem, and this person was actually a homicide
25 victim. And they were lying outdoors and their own dog

1 -- this was according to police who came on the scene.
2 When they arrived, there was a dog that turned out to
3 be the victim's own dog was pawing at the body, but the
4 person was dead.

5 But, in another case that I can think of,
6 scratch marks from dog paws were antemortem, and they
7 were confined to one place only. I'm trying to
8 remember what part of the body.

9 In this case, I had to testify later on.
10 Yeah. This case that I'm thinking of now, the paw
11 marks were limited to just one location. I can't
12 remember exactly where they were, though, whether it
13 was the leg or the arm. I can't remember.

14 Q And that was postmortem injuries that you're
15 talking about there, correct?

16 A No. In the second case, they were antemortem.
17 So, in other words, there's postmortem and antemortem.
18 Yes.

19 Q The injuries that you observed on
20 Mr. O'Keefe's arm were to the posterior part of his
21 arm, correct?

22 A Yes. Basically the posterior.

23 Q No injuries that you observed on the anterior
24 portion or the other side of the right arm, correct?

25 A That's correct. Yes.

1 Q No other injuries that you observed consistent
2 with what you're talking about as far as an animal
3 attack on any other part of Mr. O'Keefe's body,
4 correct?

5 A That's correct. Yes.

6 Q And, from what you observed in the reports and
7 the photographs, you can't say definitively what type
8 of animal, correct?

9 A That's correct. I can't.

10 Q And you can't say even if it was an animal or
11 was a dog, what breed of dog that was; is that correct?

12 A No. But, if I had to try and if I said --

13 Q I'm not asking you to try, sir. I'm just
14 asking whether or not you can say what breed of dog it
15 was. No, I can't tell you what breed. No.

16 Q You can't say whether or not those injuries
17 were inflicted inside a house or outside of a house; is
18 that correct?

19 A Yeah. I have no idea.

20 Q You can't say when they occurred, correct?

21 A Only that when he was still alive. Yeah.
22 But, other than that, no. And they are fresh looking.
23 They look like they happened very shortly before death.

24 Q And, when you say a short time, are you
25 talking about hours?

1 A Minutes to hours, I would say.

2 Q Minutes to hours, but you can't --

3 A I mean, I'm talking just based on the
4 injuries, themselves, alone, leaving anything else out.
5 You can't time injuries as exactly as you might think
6 from CSI or one of those television programs. But they
7 are generally fresh, for sure.

8 But just looking at those on their own, I
9 would have to say minutes to hours, yes.

10 Q Now, at some point, were you given or did you
11 review any files from a lab at University of California
12 Davis?

13 A I'm not sure. In relation to what?

14 Q So are you aware that the state police lab in
15 Massachusetts swabbed areas of the sleeve on the right
16 arm of Mr. O'Keefe and sent samples from that in the
17 areas of where the injuries occurred on his right arm
18 and then sent that to a lab at UC Davis? Are you aware
19 of that?

20 A I'm not sure that I remember that, no.

21 Q And so you're equally unaware, then, that when
22 that was tested there was no canine DNA found from any
23 of those swabbings in the area where the injuries that
24 you're describing as scratch marks or bite marks
25 occurred?

1 A I wasn't aware of that. I must have missed
2 it.

3 Q Were you aware of any sort of bite history or
4 a specific animal at 34 Fairview being involved in
5 attacks on other dogs?

6 A I'm sorry? I don't think I understood that
7 question.

8 Q Were you aware that there was a dog that
9 resided at 34 Fairview Road?

10 A Am I aware that there was a dog there?

11 Q Yes.

12 A I was informed there was, yes.

13 Q Were you also informed that that dog, months
14 later after January 2022, was involved in an incident
15 in which it attacked another dog, humans intervened and
16 one of the humans was bitten?

17 A No. I didn't know that.

18 Q Are you aware that there are photographs of an
19 actual bite mark from that actual dog months after
20 January 29th? Were you shown any of that?

21 A No. I don't believe I was.

22 Q Sir, did you write a report in relation to
23 what you observed or anything in regard to your opinion
24 or testimony that you're testifying here today?

25 A I didn't write a report as such, but I signed

1 a declaration early on in my involvement in this case.

2 Q And that was a declaration or an affidavit
3 that you signed under the pains and penalties of
4 perjury back on January 31st, 2023; is that correct?

5 A I'm sorry. What was that?

6 Q When you were talking about a declaration, you
7 are referring to an affidavit that you filed with the
8 Court under pains and penalties of perjury in January
9 of 2023?

10 A I didn't think it was January. However, there
11 was only one. So whatever you have.

12 Q Now, at any point in time, were you made aware
13 that there were microscopic pieces of the defendant's
14 taillight as small as one-sixteenth of an inch by one-
15 sixteenth of an inch that were found in Mr. O'Keefe's
16 clothing?

17 MS. LITTLE: Objection.

18 THE COURT: I'll allow it.

19 THE WITNESS: That were found in Mr. O'Keefe's
20 what?

21 BY MR. LALLY:

22 Q Mr. O'Keefe's shirts.

23 A I don't remember that specifically.

24 Q And that those pieces were then found to be
25 consistent with the defendant's taillight?

1 A Like I said, I don't remember that particular
2 part.

3 Q Were you ever shown any material indicating
4 that there was DNA from the defendant's taillight
5 housing that was consistent with Mr. O'Keefe?

6 A I was asked -- I asked about that, myself.
7 But I think the answer I got was no.

8 Q Now, were you ever told about a piece of
9 human hair that was found on the right rear quarter
10 panel near the area where there was a dent on the back
11 right of the defendant's vehicle?

12 A No. I don't remember that.

13 Q And you weren't also told that that was then
14 sent out for mitochondrial DNA testing and it was
15 consistent with that of Mr. O'Keefe to a degree of
16 99.895 percent?

17 A You're talking about a hair sample now?

18 Q Yes.

19 A No. I didn't have that.

20 Q Now, Doctor, would you agree that in blunt
21 impact injuries, the characteristics of a blunt object
22 can then be transferred to the victim in the form of
23 pattern abrasions that match the characteristics of
24 that blunt object?

25 A Yes. Uh-huh.

1 Q Now, of the photographs, you reviewed
2 photographs at the scene, photographs of the vehicle;
3 is that correct?

4 A Yes, I did.

5 Q You're aware that there were a number of
6 different pieces of the defendant's taillight that were
7 photographed, as well? Did you ever see those?

8 A I did. Yes. Uh-huh.

9 Q Do you recall seeing any piece of a clear
10 plastic taillight piece that was recovered on January
11 29th along with Mr. O'Keefe's sneaker that had dimpling
12 on the outside of that clear piece of plastic?

13 A I remember seeing the pictures of the glass
14 fragments, but I don't remember any more specifics than
15 that.

16 Q Do you know what a compression abrasion is?

17 A A what?

18 Q Compression abrasion?

19 A Yeah, although it's not a term we use all the
20 time. But, however, yes.

21 Q And a compression abrasion can occur when
22 there is direct pressure from a blunt object together
23 with slight rubbing movements that produce skin and
24 epidermal crushing; is that correct?

25 A Yes. You have to have some lateral movement,

1 as well, though, to get an abrasion.

2 Q Now, when you were talking about prior
3 autopsies that you've done involving pedestrian
4 collisions, is it fair to say that most of those
5 pedestrian collisions that you were doing autopsies on
6 involved pedestrians being struck by the front of the
7 vehicle?

8 A Yes. Mostly the front, uh-huh.

9 Q Mostly if the pedestrian is sort of crossing
10 the street or standing in the street and is then struck
11 by the front of the vehicle, correct?

12 A Yeah. I think they were all -- I actually
13 have done a couple of cases where children were hit by
14 the back of a reversing vehicle. This is in the days
15 before they had the rear videos on cars that they have
16 now. So those cases were impacts against the back of
17 the vehicle. But most of the pedestrian cases are,
18 yeah, as you say, they are front or the vehicle hitting
19 the person.

20 Q Just briefly on that, as far as the
21 defendant's vehicle, itself, are you aware that there
22 were rear backup cameras in a 360 degree overhead view
23 on the back of her vehicle?

24 A I remember reading that, yes.

25 Q Now, understanding what you're talking about

1 as far as a rear vehicle pedestrian collision, is that
2 typically sort of -- where on the vehicle -- let me ask
3 you this first: When you are doing an autopsy in
4 relation to a pedestrian collision, much of the
5 information that you're gaining about that is what you
6 receive from the investigating agency, whether it's the
7 police or something like that, correct?

8 A It varies a lot from one case to another.
9 Sometimes you get virtually no information about the
10 accident because some of these cases I've done, some of
11 them were witnessed and some weren't. Let's put it
12 that way. Yeah.

13 So when they weren't witnessed, when the
14 person is just found later or sometime afterwards, you
15 wouldn't have necessarily any -- the vehicle would
16 typically not be there. These would be hit-and-run
17 type of situations. And so in those cases, you
18 wouldn't have all of that kind of information. So it
19 varies.

20 Q Understanding that it varies but, primarily,
21 what I'm saying is whatever information as far as a
22 body comes in and you're going to go in to conduct an
23 autopsy, there would be some information from law
24 enforcement or witness statements or something as to
25 what type of death this is as far as gunshot wound,

1 stabbing, pedestrian collision, something like that?

2 A Yeah. Absolutely. But, like I said, in those
3 nonwitness cases of pedestrians, I might be given the
4 information that it's probably a pedestrian fatality
5 from a car.

6 Q And, when it comes to pedestrian collisions
7 and most of which you've seen are, again, from the
8 front of the vehicle striking a pedestrian in the
9 roadway; is that correct?

10 A Yes. Uh-huh.

11 Q And are you familiar with what role sort of
12 the center of mass of that person versus the center of
13 mass of where they're struck plays in reference to
14 their injuries?

15 A Yes. That can have a big effect on how the
16 body reacts to the impact.

17 Q So most of the time when you're talking about
18 sort of lower extremity injuries or pelvic fractures or
19 things like that, that is in a frontal collision with a
20 pedestrian, correct?

21 A Most of them were, yeah. I mean, they were
22 the ones that involved being backed over and they were
23 children. I can't remember the exact distribution of
24 their injuries except the vehicle went right over them.
25 I do remember that.

1 But, to answer your question -- maybe I'm
2 wandering in my mind. So can you ask me again?

3 Q I think you've answered it. So my next
4 question, sir, is when it comes to the rear-end
5 collisions primarily being children, you would agree
6 with me that they have a lower center of mass than a
7 six-foot-one, 200-something pound male?

8 A Yes. Uh-huh. Yes.

9 Q And so as far as them being run over, they are
10 going to get struck. They're probably going to fall to
11 the ground and then the vehicle is going to go over,
12 correct?

13 A That's right. Yes.

14 Q And so how many autopsies have you conducted
15 in regard to pedestrian collisions where they've been
16 sideswiped by the back of a vehicle?

17 A I can't remember.

18 Q Can you remember anything?

19 A Not off the top of my head, no.

20 Q And so someone who is struck by the right rear
21 portion of a vehicle and then projected away from the
22 vehicle based on speed, based on force, based on
23 whatever, would you then expect to see those same type
24 of pelvic fractures or lower extremity injuries that
25 you talked about with a frontal collision?

1 A No. It depends on the exact position of the
2 victim at the moment of impact. And, of course, it
3 could be a lot of different things. The victim could
4 be facing the vehicle. They could be sideways on.
5 They could have their back. But you're going to see
6 bruising somewhere in that area, in one of those areas,
7 either on the back, the side, whatever, or the front.
8 I would expect to see bruising, significant bruising.

9 Q As you testified earlier on direct, it's sort
10 of dependent or variable, depending on how the victim
11 pedestrian interacted with the vehicle; isn't that
12 correct?

13 A Yes. But I'd expect bruising for sure. I
14 mean, whether you get fractures and so forth would
15 depend on -- or, for that matter, internal injuries,
16 depends on a variety of factors. But you're going to
17 get bruising for sure.

18 Q And you did see bruising on Mr. O'Keefe's
19 right hand, though, correct?

20 A Yes, small bruising. It looked like two,
21 possibly three almost confluent or close together
22 bruises.

23 Q Now, were you aware from the materials that
24 you reviewed that Mr. O'Keefe was last seen sort of on
25 video exiting from a bar at about 12:11 a.m., holding a

1 cocktail glass in his right hand?

2 A I vaguely remember that, yes.

3 Q Were you also aware that there were pieces of
4 a cocktail glass with Mr. O'Keefe's DNA on it that were
5 found right in the general vicinity of where his body
6 was found?

7 A That, I don't remember.

8 Q You talked about a couple of different
9 patterns to the injuries that you observed on
10 Mr. O'Keefe's right arm. So my question for you,
11 Doctor, is it your testimony that those what you're
12 terming as animal bites or scratches, were they caused
13 at one time or multiple times or how many times are we
14 talking about?

15 A You mean on different occasions?

16 Q As far as there are multiple abrasions as
17 you've termed them. And you're attributing them to an
18 animal attack, correct?

19 A I think that's the most likely explanation for
20 these, yes.

21 Q And so my question is, sir, is that from the
22 dog or the animal or whatever it is scratching
23 Mr. O'Keefe once, more than once, based on what you
24 observed?

25 A It's more than once. When I had the laser

1 pointer here, I think I pointed to roughly, what, one,
2 two, three, four different areas. So it looks like the
3 ones on the lower forearm or on the forearm, I should
4 say, are harder to figure out. But it looks like four,
5 maybe five separate --

6 Q Four or five separate sort of swipes whether
7 they be with the mouth or paws or whatever?

8 A Yes. That's correct.

9 Q And so is it your testimony that it's not
10 possible that Mr. O'Keefe received that from some part
11 of the motor vehicle or a glass shattering or
12 shattering from a taillight or any sort of metal pieces
13 underneath contained within that taillight housing as
14 far as his interaction on the vehicle?

15 A They don't look remotely like that to me.

16 Q So it's not possible; is that correct?

17 A In my opinion, no.

18 Q You were asked some question with regard to
19 the surface of the ground as far as dirt or grass.

20 A Uh-huh.

21 Q Are you familiar with what the weather was
22 like at the time that Mr. O'Keefe -- you testified
23 earlier that you were familiar that he was found in the
24 snow, correct?

25 A Yes.

1 Q Do you know what the temperature was like as
2 far as -- my question is this, sir: Understanding
3 cushioning of grass and dirt under normal conditions
4 but if the ground is physically frozen based on the
5 temperature outside, would that impact as far as your
6 understanding of the injuries to the back of
7 Mr. O'Keefe's head?

8 MS. LITTLE: Objection.

9 THE COURT: I'll allow it.

10 THE WITNESS: No. I mean, even if there was a
11 small coating of ice, I wouldn't change my opinion
12 based on that, no.

13 BY MR. LALLY:

14 Q I'm not talking about ice, sir. What I'm
15 talking about is the ground, itself, being physically
16 frozen based on the temperature outside.

17 MS. LITTLE: Objection.

18 THE COURT: Sustained.

19 BY MR. LALLY:

20 Q Now, as far as the hard surface that you're
21 talking about, would that include asphalt pavement?

22 A Yes, it could. Uh-huh.

23 Q And, as far as those injuries, the speed, if
24 Mr. O'Keefe was struck by a vehicle and was projected
25 away from that vehicle and then struck his head on the

1 ground, would that be sufficient force in your opinion
2 to cause a skull fracture on the back of his head?

3 A If all that happened, yes, and onto asphalt or
4 something like asphalt, yes, if, indeed, that's what
5 happened. But, like, for other reasons, I don't think
6 that is what happened.

7 Q Now, you testified or you were asked some
8 questions about your opinion as to or consistency with
9 a physical altercation; is that right?

10 A Yes.

11 Q And the sort of swelling in Mr. O'Keefe's eyes
12 as far as ecchymosis, sir, that was related to the
13 brain injury? Is that your understanding?

14 A The skull injury rather than the brain.

15 Q Skull injury which leads to the bleeding of
16 the brain which then leads to the swelling of the eyes,
17 correct?

18 A Well, yes. But no. I mean, let's be clear
19 about this. I mentioned the fractures earlier on that
20 came from the back and went all the way towards the
21 front of the skull, including what are called the
22 orbital plates, which are the bones, the parts of the
23 frontal bone, that are right over the eye sockets. And
24 the bone there is very delicate. It is the thinnest
25 part of the skull.

1 Anyway, the photographs and the autopsy report
2 clearly show that the fracture involved that on each
3 side, both orbital plates, in other words. And it's
4 that fracture -- it's not the brain, itself, but it's
5 that fracture which leads to the bleeding that causes
6 the black eyes, if you want to call them that way.

7 Q And, as far as what -- your review of the
8 medical records, review of the autopsy report,
9 photographs, things like that, you observed nothing as
10 far as fractures to Mr. O'Keefe's eye sockets, correct?

11 A Well, the orbital plates in a sense are part
12 of the eye sockets. But they are the upper; they are
13 the roof.

14 Q Were there any fractures to the orbital bones?

15 A There were no fractures that appeared to be
16 coming from the front, no.

17 Q As far as the sclera, were there any broken
18 blood vessels or anything that you observed in either
19 the notes or the reports or the photographs or anything
20 else that you saw?

21 A Broken blood vessels were?

22 Q The sclera. The sclera of the eyes. Do you
23 know what that is?

24 A Oh, the eye. Yes. I couldn't hear. I just
25 couldn't hear what you said. No. As far as I know,

1 the eyes were clear. The eyes, themselves, were clear.

2 Q Now, as far as the minor injuries that you
3 were talking about as far as the eyelids or the nose as
4 far as the minor lacerations you were talking about,
5 there was no bruising around any of those lacerations,
6 correct?

7 A The eyelid laceration, don't forget, is in the
8 same area where you have the other injury and it's a
9 little bit hard to figure out how much of that black
10 eye could even be from, related to the laceration
11 because you've got two possible explanations for the
12 black eyes. One is the skull fracture I already
13 mentioned. But that doesn't rule out his getting an
14 impact, as well, on the front. But I can't -- there is
15 no way to separate them.

16 Q But, as far as around those minor lacerations
17 that you're talking about, you didn't observe or see
18 any record of any bruising or any broken bones in those
19 areas whatsoever?

20 A No. Well, the main one that I was relating to
21 when I spoke about the altercation question was the
22 laceration on the eyelid. That's not related to the
23 head injury that we're discussing. So it's a separate
24 injury, and it is from some kind of blow to the front.

25 Q The minor lacerations that you observed, would

1 they be consistent with being struck by broken pieces
2 of glass or broken pieces of -- broken, sharp pieces of
3 plastic?

4 A If it was, indeed, a laceration as it was
5 described, then, no, because lacerations by definition,
6 although this is a term that's often misused, by the
7 way, even by some doctors, but a laceration by
8 definition is an open wound caused by blunt force, not
9 sharp.

10 Q Blunt force as far as what I'm asking is, is
11 it possible that the lacerations to his face were
12 caused by a blunt object that then shattered and caused
13 lacerations to his face?

14 A I find that hard to imagine. I find that very
15 hard to even conceive of.

16 Q It's not conceivable? Is that what you're
17 saying?

18 A To me, no.

19 Q And, from your review of whatever reports and
20 medical records and everything else, what, if anything,
21 did you see or did you see anything that had to do with
22 an animal being present on scene or an animal being
23 near Mr. O'Keefe's body or Mr. O'Keefe being inside the
24 house?

25 A I don't know. But, I mean, I heard there was

1 an animal somewhere around the place, a dog. I think
2 you mentioned the dog earlier.

3 Q Somewhere around the place but no evidence
4 that you've seen that that animal interacted with
5 Mr. O'Keefe in any way?

6 A No. I wasn't there, obviously. All I can say
7 is what I've already said. But I don't know any more
8 than that.

9 Q Again, I know you weren't there. What I'm
10 saying is from the material that you reviewed, was
11 there any indication or any evidence of that animal
12 ever being near, close to or interacting in any way
13 with Mr. O'Keefe?

14 A Not that I'm aware of, no.

15 MR. LALLY: I have nothing further.

16 THE COURT: Ms. Little?

17 MS. LITTLE: Thank you. Your Honor, if I may
18 approach?

19 THE COURT: Sure.

20 MS. LITTLE: Thank you.

21 THE COURT: Show Mr. Lally.

22 REDIRECT EXAMINATION

23 BY MS. LITTLE:

24 Q Dr. Sheridan, if you could just take a look at
25 that photograph. Do you recognize that?

1 A Yes. I saw the photograph before.

2 Q Can you describe that photograph for the jury?

3 A It shows the decedent's knees taken from the
4 right side, but you can see both knees.

5 MS. LITTLE: Your Honor, permission to mark
6 this and then publish it?

7 THE COURT: Mark it? Put it into evidence?

8 MS. LITTLE: Yes.

9 THE COURT: Is there any objection, Mr. Lally?

10 MR. LALLY: No, Mr. Lally.

11 THE COURT: Okay.

12 (Whereupon, photograph was entered and marked
13 Exhibit No. 657 in Evidence.)

14 THE COURT REPORTER: That will be Exhibit 657.

15 THE COURT: Yes. You may publish it,
16 Ms. Little.

17 MS. LITTLE: Thank you, Your Honor.

18 BY MS. LITTLE:

19 Q Dr. Sheridan, you were asked on cross-
20 examination about injury to Mr. O'Keefe's knee. Do you
21 recall that testimony?

22 A Yes. Uh-huh.

23 Q Is this the injury that you were testifying
24 about earlier?

25 A Yes. This has been mentioned before. It's an

1 abrasion.

2 Q And that is the extent of the injury to
3 Mr. O'Keefe's knee, correct?

4 A Yes. That's it, yes, in that area.

5 MS. LITTLE: Thank you. No further questions.

6 THE COURT: All right, Dr. Sheridan. You are
7 all set, sir.

8 THE WITNESS: Very well. Thank you, Your
9 Honor.

10 (Whereupon, the witness is excused.)

11 Whereupon,

12 DANIEL MICHAEL WOLFE

13 having been first duly sworn, was examined and
14 testified under oath as follows:

15 THE COURT: Okay, Mr. Jackson. Whenever
16 you're ready.

17 MR. JACKSON: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. JACKSON:

20 Q Doctor, could you state your full name and
21 spell your last name for us, please?

22 A Daniel Michael Wolfe, last name spelled
23 W-O-L-F-E.

24 Q Dr. Wolfe, what do you do for a living?

25 A I am the Director of Accident Reconstruction

1 at a company known as ARCCA, A-R-C-C-A.

2 Q And what is ARCCA exactly?

3 A So ARCCA is a forensic engineering consulting
4 firm. We have a variety of disciplines that include
5 human factors, biomechanics, crashworthiness, accident
6 reconstruction, just to name a few.

7 Q Based on your title, it sounds like you're the
8 director of the entire accident reconstruction format
9 for ARCCA; is that correct?

10 A That is correct.

11 Q What sort of contracts does ARCCA routinely
12 engage in?

13 A So we do a lot of work in civil litigation.
14 We work with insurance carriers, law firms. But we
15 also consult with and do projects with and do projects
16 with the federal government as well as the National
17 Hockey League on player safety. So we are involved in
18 a number of research projects, as well.

19 Q Is there other clientele that seeks out ARCCA
20 for accident reconstruction or biomechanics or human
21 factors issues?

22 A In terms of beyond the parties that I just
23 listed?

24 Q Did you mention the U.S. Department of
25 Defense?

1 A Yes. The military. Yes. The Army.

2 Q Tell me a little bit about the work that
3 you've done for the Department of Defense.

4 A Well, that was before my time. But I'm aware
5 of projects that dealt with working on vehicles that
6 were over in the Middle East where they basically
7 designed energy-absorbing seats because there were
8 injuries when the vehicles were going over IEDs.

9 Q Is ARCCA known both nationally and
10 internationally? Is it recognized as a leader in
11 accident reconstruction issues?

12 A Yes.

13 Q As the director of accident reconstruction at
14 ARCCA, do you specialize in both accident
15 reconstruction and the human factors that are
16 associated with such reconstruction where necessary?

17 A Yes.

18 Q Can you give me a synopsis of the professional
19 discipline of what is accident reconstruction?

20 A I think a simple definition in my mind would
21 be the application of physics, engineering, science and
22 mathematics to collision events. I always like to
23 think of it as if you open up the puzzle box and you
24 dump the pieces out and you've got a bunch of pieces
25 and you're trying to piece together the evidence to see

1 how everything fits to get a clear picture.

2 Q And what is the application of human factors
3 to that process?

4 A So to give you an example of human factors in
5 the field of accident reconstruction, so I do a lot of
6 nighttime visibility and conspicuity work. So to give
7 you an example of that, let's say a driver is driving
8 down the road at night. There is a pedestrian that is
9 crossing the road. So we want to have an understanding
10 based upon that pedestrian's clothing, the headlights
11 of the vehicle, any potential artificial lighting in
12 the area, when does a driver recognize that individual
13 on the roadway.

14 And then we can also look at literature to
15 have an understanding of how do drivers respond based
16 upon the hazards they're presented with. So there's
17 different response times depending on the hazards. So
18 it's going to be different for a pedestrian crossing
19 the roadway or a driver responding to a vehicle
20 suddenly stopping in front of them.

21 Q Dr. Wolfe, as an accident reconstructionist,
22 do you investigate and reconstruct both passenger
23 vehicle issues, commercial vehicle issues, motor
24 vehicle pedestrian issues, all of the above?

25 A Yes. I see all types of accidents.

1 Q And how long have you been doing this work
2 with ARCCA?

3 A A little over seven years now.

4 Q What education, training and background
5 qualifies you to perform the duties that you've just
6 described for the jury?

7 A Back in 2012, I received a Bachelor of Science
8 in Engineering from James Madison University along with
9 a minor in mathematics. Some of my courses while at
10 JMU included courses in physics, statics, dynamics,
11 kinematics, material science, along with your other
12 engineering science, along with your other engineering
13 sciences.

14 Subsequent to my undergraduate degree, I then
15 went on to the University of Delaware to pursue my
16 Ph.D. in electrical and computer engineering with a
17 concentration in electromagnetics and photonics.

18 Q What additional training or experience do you
19 have as it relates to accident reconstruction in
20 addition to the formal education and the Ph.D.?

21 A Sure. So in addition to my undergraduate
22 degree and my Ph.D., I've continued to take courses
23 through Northwestern University in crash
24 reconstruction. So those courses have included human
25 factors, lighting. I've taken courses on electronic

1 vehicle data, photogrammetry, pretty much laser
2 scanning. So I've continued to take courses subsequent
3 to graduating.

4 Q Do you also hold any accreditations in terms
5 of accident reconstruction?

6 A Yes. I'm accredited by an organization known
7 as ACTAR, which is the Accreditation Commission for
8 Traffic Accident Reconstruction.

9 Q Are you trained in photogrammetry?

10 A Yes, sir.

11 Q Is that to determine vehicle crash incidents
12 or the circumstances surrounding them based on map
13 scenes, evidence from photographs, things of that
14 nature?

15 A Absolutely. So photogrammetry is the science
16 of extracting information, if you will, out of
17 photographs. So things dimensionally about an object
18 spatially without very physically seeing the object or
19 inspecting it.

20 Q So you don't have to be at the scene to
21 effectively and scientifically reconstruct it to your
22 satisfaction?

23 A No, not at all. And, quite frankly, to be
24 honest with you, in my world and civil litigation,
25 oftentimes by the time a case comes across my desk, you

1 know, the accident happened five years ago. Some I've
2 even had 10 or 15 years ago. So getting access to the
3 vehicle at that point, it's going to be a longshot.

4 Q Doctor, are you a member of any professional
5 societies?

6 A Yes.

7 Q Describe those, please.

8 A So I'm a member of the Society of Automotive
9 Engineers, SAE. I'm also a member of the National
10 Association for Professional Accident
11 Reconstructionists, the Optical Society of America and
12 also the Illuminating Engineering Society.

13 Q How many cases would you say in your
14 experience and your career have you reconstructed or
15 attempted to reconstruct, you or your team members?

16 A I don't actively track that. If I had to
17 estimate it at this point in my career, probably well
18 over a thousand.

19 Q And how many of those thousand -- I know you
20 don't have a number specifically but how many of those
21 thousand would you say involved pedestrians, as well?

22 A Several hundred. As I mentioned earlier, you
23 know, a great deal of my work is in the field of
24 lighting and visibility. So there is a direct
25 correlation between time of day and pedestrian

1 incidents. We see a rise in the evening and night
2 hours just due to drivers having a difficult ability to
3 try to perceive and recognize individuals. So I
4 certainly see a lot of pedestrian collisions in my
5 casework.

6 Q Have you done testing and research as it
7 relates to the kinematics and the interaction between
8 pedestrians and vehicles?

9 A Absolutely. So we do a number of tests at
10 ARCCA to look at the interaction between pedestrians
11 and vehicles. One of the ones I know I did most
12 recently where we were evaluating a vehicle essentially
13 rolling over a pedestrian. So we wanted to understand
14 the vehicle dynamics as well as the interaction between
15 the pedestrian and the road surface. So we conducted
16 testing at ARCCA to evaluate that.

17 Q Does ARCCA have any other disciplines other
18 than just accident reconstruction?

19 A Absolutely. So as I mentioned earlier, we
20 have crashworthiness. So again, that's where you're
21 going to be looking at the safety of a vehicle, how
22 does it perform in a crash. We have human factors,
23 failure analysis, premise liability and biomechanics.

24 Q As an accident reconstructionist, Doctor, do
25 you or have you studied or tested the forces that are

1 at play between objects, objects interacting, a human
2 being interacting with a vehicle, for instance?

3 A Yes.

4 Q Is that part of what you do?

5 A Yes, sir.

6 Q Describe that.

7 A So we use hybrid instrumented dummies at ARCCA
8 for our testing. So if we want to have an
9 understanding that an occupant in a vehicle, the forces
10 that they might experience or, for any matter, again,
11 if it's an instance where you have something that ends
12 up falling on someone's head and you want to have an
13 understanding of the forces involved in that, we
14 perform testing with hybrid dummies.

15 Q Have you ever authored and peer-reviewed
16 papers in the field of physics?

17 A Yes, sir.

18 Q Describe those.

19 A So I have a number of papers in the field of
20 lighting in optics. I have a recent publication that
21 deals with Toyota and Lexus vehicle control history
22 records, as well.

23 Q Is that called Toyota vehicle control history,
24 sudden braking history recording characteristics?

25 A Yes, sir.

1 Q Was that specific to dealing with vehicles and
2 their interaction with other vehicles and/or
3 pedestrians?

4 A It involved looking at the various triggers
5 that that system is capable of recording.
6 Specifically, it was looking at what triggers a sudden
7 braking event. So we were able to determine that those
8 triggers, the sudden braking event, is triggered when a
9 driver, I should say, the vehicle --

10 MR. LALLY: Objection. May we approach?

11 THE COURT: Sure. Come on over.

12 (Whereupon, there was a sidebar conference as
13 follows:)

14 THE COURT: What is the objection?

15 MR. LALLY: Whatever this expert's experience
16 with or writing journal articles in relation to --
17 history, but I was told and what the Court was told
18 was that he would testifying consistent with his
19 report in which he did not review any VCH data in
20 this case. So I object to his testifying as to --
21 anything about this.

22 MR. JACKSON: I'm not going to ask him
23 anything about VCH data. That just happens to be
24 what the peer-reviewed article is about.

25 THE COURT: Just stop this line of inquiry.

1 MR. JACKSON: I can move on.

2 (Whereupon, the sidebar conference concluded.)

3 MR. JACKSON: May I, Your Honor?

4 THE COURT: Yes. Move on.

5 BY MR. JACKSON:

6 Q You've been qualified in other courts to
7 testify as an expert in the area of accident
8 reconstruction; is that right?

9 A Yes, sir.

10 Q You were not hired by the defense in this
11 case, correct?

12 A That is correct.

13 Q At the time you did your expert review,
14 Dr. Wolfe, and your consultation, you and I had never
15 met?

16 A That's correct.

17 Q You did not know who I was?

18 A I did not.

19 Q You had never met Ms. Little?

20 A No.

21 Q Mr. Yannetti?

22 A No.

23 Q As a matter of fact, you had never heard of
24 this case?

25 A That's correct.

1 Q You were hired by another agency not connected
2 in any way to the defense; is that right?

3 A Correct.

4 Q And not connected in any way to the
5 Commonwealth; is that right?

6 A Correct.

7 Q So your analysis and your conclusions and your
8 opinions are completely independent of the defense and
9 the Commonwealth in this case; is that right?

10 MR. LALLY: Objection.

11 THE COURT: Sustained. Mr. Jackson, you can
12 ask it differently.

13 BY MR. JACKSON:

14 Q When you did your analysis and conclusions --
15 well, let me ask it this way: You finalized your
16 report, you and your team, correct?

17 A Correct.

18 Q And that report is contained in a multi-page
19 document that was submitted following your analysis and
20 your opinions and conclusions, right?

21 A Correct.

22 Q The defense didn't have anything to do with
23 that, correct?

24 A Correct.

25 Q You had never met us, didn't know who we were

1 when we did this?

2 A Correct.

3 Q You had never met Mr. Lally and didn't know
4 who he was when you did this?

5 A Correct.

6 Q So your analysis, opinions, testing and
7 conclusions were requested by a completely separate
8 agency?

9 A That is correct.

10 Q All right. It goes without saying, but I'm
11 going to ask it anyway. You haven't been paid by the
12 defense?

13 A You have not paid us anything. No.

14 Q And you don't work for us?

15 A That's correct.

16 Q As a matter of fact, I've never asked you
17 specific questions about your testing before today?

18 A That is correct.

19 Q Your work product, the report that you
20 provided, was provided both to the defense as well as
21 the Commonwealth; is that right?

22 A That's my understanding, yes.

23 Q And you were equally available to both sides?

24 A In terms of them reaching out?

25 Q Correct.

1 A Yes.

2 Q And I called you ultimately after receiving
3 your report and asked if you'd join us and testify,
4 correct?

5 A That is correct.

6 Q All right. Were you and your team asked to
7 undertake a review for purposes of accident
8 reconstruction of the case that's now pending before
9 the Court?

10 A Yes, sir.

11 Q Was your team asked to do this by the agency
12 that ultimately retained you, not us?

13 A That's correct.

14 Q Who at ARCCA was assigned to the team who
15 would ultimately undertake this job of accident
16 reconstruction?

17 A It was myself, Dr. Andrew Rentschler and
18 Scott Kline.

19 Q What was Dr. Rentschler's role in this case as
20 it's distinguished from your role in the case?

21 A Certainly. So Dr. Rentschler is a
22 biomechanical engineer and, ultimately, he assessed
23 whether or not there was a mechanism of the injuries
24 for Mr. John O'Keefe.

25 Q And what was your focus? If he's talking

1 about the injuries to Mr. O'Keefe, what was your focus
2 and your reconstruction and your analysis?

3 A I would simply say it was looking more at the
4 damage to the vehicle.

5 Q Okay. So in terms of your team and the
6 responsibilities of each of the team members, you were
7 more focused on the damage to the SUV. Dr. Rentschler
8 was more focused on the injuries suffered by
9 Mr. O'Keefe, correct?

10 A I think that's a fair characterization
11 although with the caveat that we work together as a
12 team. So we weren't isolated kind of in those areas,
13 you know, not speaking to each other. We certainly
14 worked together on the analysis.

15 Q Understood. Were you provided or did you
16 review certain materials in furtherance of your
17 consultation in this matter?

18 A Yes.

19 Q What were you provided?

20 A We were provided photographs of the incident
21 location. We were provided photographs of the Lexus.
22 There were a couple of incident reports that we
23 received. I could look in my report for the full list.

24 THE COURT: You can go ahead and do that,

25 Doctor.

1 BY MR. JACKSON:

2 Q Do you have the report with you?

3 A Yes, sir.

4 Q I have a copy of it. Is this faster?

5 A Sure.

6 MR. JACKSON: May I?

7 THE COURT: Sure.

8 BY MR. JACKSON:

9 Q How many categories of materials were you
10 provided?

11 A Provided, it would be approximately 10.

12 Q Could you list those off for the jurors,
13 please?

14 A It would be the Norfolk SPDU Homicide Death
15 Report, the Commonwealth of Massachusetts Department of
16 State Police Crime Scene Report, OCME Dispatch Removal
17 Report, photographs of the incident location, videos of
18 the incident location, photographs of the 2021 Lexus
19 LX 570, photographs of recovered evidence, crash data
20 retrieval report from the 2021 Lexus 570, report of
21 autopsy and autopsy photographs.

22 Q Based on these data that you were provided,
23 were you able to satisfactorily to your mind,
24 satisfactorily engage in the consultation that you were
25 hired to do?

1 A Yes.

2 Q And come up with some opinions and conclusions
3 based on scientific certainty?

4 A Yes.

5 Q Did you review scene photographs of the
6 alleged incident?

7 A Yes, sir.

8 Q What information were you able to glean or
9 gather from your review of the photographs from the
10 scene specifically?

11 A So from those photographs, I was able to
12 identify there was fragments of transparent, red, clear
13 plastic. There also appeared to be pieces of chrome
14 and black plastic. I also observed what appeared to be
15 glass fragments along with a black drinking straw.

16 Q Did you also review some videos?

17 A Yes.

18 Q Maybe a leaf blower?

19 A Correct. It appeared to be daytime. Yes.

20 Q Okay. What did you note about the photography
21 at the scene of the items that were being photographed?

22 A Well, I think one thing that comes to mind is
23 it was a little bit difficult to follow the evidence,
24 so to speak. So typically when I go out and do an
25 inspection, especially of a fresh incident, let's say

1 I've got a debris field or I've got tire marks, what I
2 like to do is kind of step into the scene, if you will,
3 where you take global perspective shots and then you
4 step into a specific piece of evidence so that you can
5 at a later point in time identify where that evidence
6 is.

7 I noted that in a lot of these photographs, I
8 didn't see a whole lot of that stepping in. It was
9 essentially just zoomed right in to where that evidence
10 is but not really having a great understanding of where
11 was it relative to all of the other evidence.

12 Q Or when it got there?

13 A Correct.

14 Q Based on your review of all of the materials
15 that you described for the Court, did you get an
16 understanding of what the Commonwealth's theory of the
17 case is, specifically, that Mr. O'Keefe was struck by
18 the Lexus SUV?

19 MR. LALLY: Objection.

20 THE COURT: Sustained.

21 BY MR. JACKSON:

22 Q Did you come to understand that the
23 allegations before the Court were that Mr. O'Keefe
24 was struck by the vehicle?

25 MR. LALLY: Objection.

1 THE COURT: Sustained. Ask it differently,

2 Mr. Jackson.

3 BY MR. JACKSON:

4 Q Did you perform an accident reconstruction
5 specifically focused on determining whether or not
6 damage to the Lexus was consistent with hitting
7 Mr. O'Keefe?

8 A Yes. I think that's a fair characterization.

9 Q And reversing that, was your accident
10 reconstruction also focused on whether or not the
11 injuries to Mr. O'Keefe were the result of being hit by
12 a vehicle?

13 A Yes.

14 Q Okay. During your analysis, did you note the
15 damage to the vehicle?

16 A Yes, sir.

17 Q Describe that, please.

18 A So the primary damage was to the right
19 taillight. It appeared to be fractured with the
20 majority of the lens cover so that that clear and red
21 plastic covering was missing from it.

22 In addition to that, if you're looking at the
23 back of the vehicle to the left of that, in the area
24 above the -- there is also another tail lamp assembly
25 on the lift gate. So above that assembly there was a

1 small dent along with some paint chips on the bumper,
2 more so on the wraparound section as it kind of curves
3 around to the right side of the vehicle. There
4 appeared to be some superficial scratches, as well, in
5 that area.

6 Q Was there any other damage or deformation that
7 you were able to glean from your review of the
8 photogrammetry, damage to the Lexus, the bumpers, the
9 panels, the quarter panel, the sheet metal, anything
10 like that?

11 A No. The rest was remarkably intact.

12 Q Is it common in vehicle pedestrian collisions
13 that there's some sort of bumper displacement and/or
14 sheet metal deformation that's concomitant to that?

15 A Absolutely. Assuming the pedestrian is
16 positioned in a normal, upright position, you certainly
17 would expect to see damage to the bumper. In a lot of
18 cases, what happens is, you know, the bumper is just
19 clipped on. So, again, the force of that impact will
20 oftentimes cause the bumper to kind of become unmounted
21 or unclipped. You certainly could see deformation to
22 body paneling such as the lift gate or the quarter
23 panel, as well.

24 Q Is that especially true at higher speeds,
25 meaning above 15 miles per hour or so?

1 A Oh, absolutely. Yes.

2 Q Was there any apparent damage to the Lexus
3 that appeared consistent with any kind of pedestrian
4 interaction that you saw?

5 A No. It was -- again, it was really confined
6 to just the taillight, a very isolated portion of the
7 vehicle.

8 Q During your review and your investigation, did
9 you note information concerning items that were
10 supposedly found on the bumper?

11 A Yes.

12 Q What was that?

13 A I believe it was noted there were two apparent
14 glass fragments located on the top bumper cover.

15 Q What is the significance of the presence of
16 those items or the lack of materiality of those items
17 in your view?

18 A Well, again, I think going back to the scene
19 evidence, again, we knew that there was glass
20 fragments, what appeared to be from a drinking glass at
21 the scene of the alleged incident.

22 Q Is there any glass consistent with the glass
23 that was supposedly found on the bumper, in the
24 taillight housing, the taillight mechanism, anything
25 from the car, from the Lexus, that would account for

1 that glass?

2 A Okay. I think I understand. So the
3 taillight, itself, is not comprised of any glass. It
4 is all plastic. So that damage or, I should say, that
5 glass on the top bumper cover could not have come from
6 the right taillight.

7 Q Now, based on your review of the information
8 that was provided to you, did you undertake any testing
9 of that vehicle? I'm sorry. Any testing concerning
10 the damage to the vehicle?

11 A Yes, sir.

12 Q All right. Can you describe what that testing
13 was?

14 A So we performed -- again, this is with
15 Dr. Rentschler and I working together on this again.
16 We performed projectile testing to the tail lamp with a
17 drinking glass as well as a hybrid head form.

18 Q Let's take those one at a time. How would you
19 describe the drinking glass test?

20 A Certainly. So again, from our review of the
21 evidence, we knew that we had an isolated portion of
22 damage to the Lexus confined to the taillight. So we
23 know that we're dealing with potentially a small object
24 that could have created that.

25 Looking at, again, the evidence in terms of

1 the scene photographs, we know that we have a damaged
2 drinking glass at the scene in the vicinity of the
3 fragments of the taillight. So the theory that
4 Dr. Rentschler and I put forward is potentially an
5 individual threw this drinking glass at the back of the
6 Lexus, causing the taillight to fracture.

7 Q I'm going to interrupt you right there. You
8 and Dr. Rentschler formed that theory and wanted to
9 test that theory, correct?

10 A Yes.

11 Q You were not told that theory by the defense
12 because you had never met us?

13 A Correct.

14 Q You were not told that theory by the
15 Commonwealth? You never met them, correct?

16 A Correct.

17 Q Your theory was the product of simply having
18 some facts extant in the data. You've got a broken
19 drinking glass and a broken taillight. Let's put them
20 together and figure out if the drinking glass could be
21 responsible for the taillight and vice versa.

22 A Absolutely, yes.

23 Q And that was your determination of, well, we
24 were given instructions to reconstruct this. Let's
25 look at every single angle, correct?

1 A Absolutely. And I will note as part of the
2 engagement with the entity that retained us, we were
3 asked not to do any outside research or investigation
4 of the case. It was to be based solely on the evidence
5 that we were provided.

6 Q As a matter of fact and importantly, while you
7 were doing your testing, had you ever even heard of the
8 Karen Read case?

9 A No.

10 Q So getting back to that testing, and I
11 interrupted your flow, you were looking at whether or
12 not the glass could have produced the damage to the
13 rear taillight that you saw, correct?

14 A Correct.

15 Q And what did you do in furtherance of making a
16 determination about whether or not that was possible?

17 A Certainly. So myself and one of our lab
18 technicians at ARCCA, we designed and developed a
19 pressurized air cannon so it was capable of firing a
20 projectile such as a drinking glass at the taillight.
21 You can think of it as kind of a giant cannon, but it
22 had a barrel and then there was a valve that would open
23 rapidly, and directly behind that was a pressurized
24 vessel. And, depending on the pressure, the psi of
25 that vessel would determine essentially the speed at

1 which that glass would be projected into the taillight.

2 Q So you literally built a cannon?

3 A Yeah. It's pretty awesome.

4 Q Tell me what the results of your testing was
5 with this pneumatic cannon that would fire the drinking
6 glass.

7 A Certainly. So we performed two different
8 tests in terms of speeds. The target speeds were 30
9 and 40 miles per hour.

10 Q Why was that?

11 A Well, so with consultation with
12 Dr. Rentschler, he indicated that that is a reasonable
13 speed at which an adult male or an individual, for that
14 matter, could throw a drinking glass at the taillight.

15 Q Had anybody up to that point, anybody, told
16 you any specific -- let me see if I can rephrase that.

17 Had anybody indicated that there was any
18 evidence whatsoever that John O'Keefe had thrown a
19 drinking glass at the taillight?

20 A No.

21 Q Was this another example of you and
22 Dr. Rentschler and your team just exploring sort of
23 every possibility and working a little bit in the
24 blind?

25 MR. LALLY: Objection.

1 THE COURT: Sustained.

2 BY MR. JACKSON:

3 Q What was the reason that you decided or you
4 and your team decided that you wanted to approximate
5 how a grown man could throw a glass at a taillight?

6 A Well, I think we wanted to have an
7 understanding, is when a projectile such as a drinking
8 glass interacted with the taillight would we get damage
9 on the test taillight that was consistent with that of
10 the subject taillight.

11 Q Understood. So based on your theory, were you
12 able to approximate the damage on the taillight?

13 A Yes.

14 Q Describe that for us.

15 A So as I mentioned, we ran two tests. The
16 target speeds were at 30 and 40 miles per hour. And
17 there was a little bit of variability in terms of what
18 our target was and what we actually achieved. So the
19 achieved speeds were at 31 miles per hour and 37 miles
20 per hour. So just depending on how the glass leaves
21 the barrel and some of the rotation can affect some of
22 the speed or ultimately the end result speed to that.

23 So what I will say, though, is that with the
24 37-mile-per-hour projectile into the taillight, we
25 noted and observed that there was damage that was

1 consistent with that of the subject tail lamp and that
2 the test tail lamp had the majority of the outer lens
3 fractured and missing, broken into pieces, as well as
4 some underlying damage to some of the internal
5 components, as well.

6 Q Are you saying -- well, let me ask a different
7 question: You were able to replicate the damage to the
8 taillight using a pneumatic cannon firing a glass at 37
9 miles an hour directly at the taillight, correct?

10 A Correct.

11 Q All right. And that would also shatter the
12 glass, too, correct?

13 A Correct.

14 Q Did you do any testing about whether or not
15 that damage to the taillight could be produced by a
16 person simply holding a glass and being hit by the car
17 driving in reverse?

18 A We didn't do any testing of that and primarily
19 because, again, if we are looking at the arm in its
20 total length, again, we only have a narrow damage
21 pattern which, on the taillight, if you think about
22 where it meets the lift gate and to where it starts to
23 wrap around to the side of the vehicle, that's only
24 about six and a half inches in width.

25 Q All right. When you fired the glass into the

1 taillight, the taillight was static; in other words, it
2 was immovable at that point, correct?

3 A Correct.

4 Q All right. So the glass is hurling through
5 the air at 37 miles an hour and hits the static object
6 that's resisting, and that smash is what produced
7 ultimately the taillight damage that you were able to
8 replicate; is that right?

9 A Yes.

10 Q If a person were holding in his hand the glass
11 and the taillight were to hit that hand, the hand would
12 not remain static, correct?

13 MR. LALLY: Objection.

14 THE COURT: Sustained. Ask it differently,

15 Mr. Jackson.

16 BY MR. JACKSON:

17 Q If the taillight were to make contact with the
18 person holding the glass, would that replicate what you
19 did in terms of your firing a glass into the taillight?
20 In other words, are they apples and apples?

21 A No. I don't think it would be the same.

22 Q Okay. Why is that?

23 A Well, as I mentioned earlier, again, the
24 damage to the back of the Lexus again is confined to
25 just that -- roughly, again, we are talking about the

1 taillight, itself, that six-and-a-half-inch section in
2 width.

3 Q Right.

4 A So it's inconsistent with the total length
5 of the arm and certainly from discussion with
6 Dr. Rentschler, inconsistent with the injuries to the
7 arm.

8 Q So given everything that your investigation
9 revealed concerning this testing, are you saying that
10 the taillight was damaged by John O'Keefe holding a
11 drinking glass that was hit by an SUV?

12 MR. LALLY: Objection.

13 THE COURT: Sustained.

14 BY MR. JACKSON:

15 Q In all of the information that you were
16 provided, you were not provided anything that suggested
17 that John O'Keefe threw a glass at the taillight,
18 correct?

19 MR. LALLY: Objection.

20 THE COURT: Sustained.

21 MR. JACKSON: May we approach?

22 THE COURT: Yes.

23 (Whereupon, there was a sidebar conference as
24 follows:)

25 THE COURT: Every single question is leading.

1 You can -- it's your witness.

2 MR. JACKSON: I can. But we can lead experts,
3 generally.

4 THE COURT: No. Don't lead.

5 MR. JACKSON: It's just leading now.

6 THE COURT: What was the nature of the
7 objection?

8 MR. LALLY: Leading.

9 THE COURT: Almost your entire direct has been
10 leading.

11 MR. JACKSON: Understood.

12 THE COURT: Just don't do it. Okay?

13 (Whereupon, the sidebar conference concluded.)

14 MR. JACKSON: May I?

15 THE COURT: Yes.

16 MR. JACKSON: Thank you.

17 BY MR. JACKSON:

18 Q What information, if any, were you provided
19 that suggested that John O'Keefe threw a glass at the
20 taillight?

21 A No information.

22 Q What information, if any, were you provided
23 that suggested that John O'Keefe may have had a
24 pneumatic cannon with him?

25 A I'm not aware of any information regarding

1 that.

2 Q All right. You also did some testing
3 concerning a drop test; is that right?

4 A Correct.

5 Q Tell us about that drop test testing.

6 A Certainly. So through discussion with
7 Dr. Rentschler, it was my understanding that
8 Mr. O'Keefe had a skull fracture on the back of his
9 head. So we wanted to do an evaluation of the
10 interaction between the back of the head -- in this
11 case, again, talking about that instrumented dummy
12 again. We used the instrumented hybrid head form to
13 perform a drop test to evaluate the forces of an
14 interaction between a taillight from the Lexus and the
15 human head.

16 Q What height did you choose to perform this
17 drop test?

18 A Seven and a half feet.

19 Q Why did you choose that height?

20 A Well, if you calculate it through physics and
21 the acceleration due to gravity, that would equate to
22 an impact speed of 15 miles per hour at that height.

23 Q And what was the significance of 15 miles per
24 hour?

25 A Well, that was essentially kind of a starting

1 point for us, if you will. So I will tell you that in
2 reverse, 15 miles an hour is fast. I don't know if
3 you've ever looked at your speedometer when you're
4 pulling into your driveway, reversing into it, into a
5 parking stall. Most people probably don't go more than
6 five miles an hour or so. So 15 miles an hour in
7 reverse is fast, especially when we are talking about
8 -- it's my understanding it was nighttime. There was
9 winter conditions, potentially wet or icy roads. So,
10 again, that speed is going to be what I would say is on
11 the high end for going in reverse.

12 Also, in addition to -- with respect to kind
13 of just the nature of that speed, it's my
14 understanding, through discussion with Dr. Rentschler,
15 that at 15 miles an hour you start to see significant
16 injuries to the human body when it makes contact with a
17 vehicle.

18 And I think one last point is that we needed
19 to pick a speed where -- again, this is kind of just us
20 brainstorming where we would have damage to the
21 taillight. Right? It would fracture it but it
22 wouldn't completely obliterate it. So we knew if we
23 chose a speed, for instance, of 40 miles an hour, we
24 know we are going to completely essentially explode the
25 taillight. But if we do, you know, one miles an hour,

1 we may not do anything to it. So we kind of had to
2 pick a middle ground to again cause damage to the
3 taillight.

4 Q What was your conclusion -- following that
5 testing, what was your conclusion with regard to
6 whether or not it was consistent or inconsistent with
7 the damage to the truck and the taillight? Was it
8 consistent or inconsistent with making contact with
9 John O'Keefe's head at about 15 miles an hour?

10 A So strictly speaking to a damage perspective,
11 the 15-mile-an-hour interaction between the hybrid
12 heads form and the test tail lamp produced
13 significantly more damage than that of the subject
14 vehicle. So that indicates that, again, the damage on
15 the subject taillight was less than that of the test
16 taillight.

17 Q So if we were to -- if I were to ask you
18 whether or not there would be more or less damage to
19 the taillight if you increased the speed to 24 miles an
20 hour, what is your conclusion?

21 A Well, you're talking about significantly more
22 kinetic energy. So if you just think about it from,
23 again, a kinetic energy standpoint, you know, kinetic
24 energy is equal to one-half times the mass and the
25 velocity squared. So if you're squaring that velocity

1 and you're going from 15 up to 24 miles per hour,
2 you're going to get a significant amount of more energy
3 associated with that, probably -- I could pull up my
4 calculator but you're probably looking at two and a
5 half times more energy than the 15-mile-an-hour test.

6 Q Which means two and a half times the damage to
7 the taillight?

8 A Certainly.

9 Q Which you did not see in your review of the
10 materials, correct?

11 A Correct.

12 Q So what is your opinion or conclusion as to
13 whether or not the damage to the taillight was caused
14 by striking John O'Keefe's head?

15 A From a damage standpoint, it was inconsistent.

16 Q I want to shift gears back to the injuries
17 that you saw concerning Mr. O'Keefe's arm, his right
18 arm. During the course of your investigation, did you
19 look at photographs and investigate the injuries to his
20 right arm?

21 A Yes, sir.

22 Q What is the width of the taillight
23 specifically from where it meets the lift gate to the
24 left side -- I'm sorry -- to the side of the vehicle,
25 the right side of the vehicle?

1 A Yeah. As I mentioned earlier, that is about
2 six and a half inches. Again, it starts to wrap around
3 to the right side. So really, even though the
4 taillight continues, it's not projecting out on the
5 back end where it's wrapping around.

6 So in terms of the width that is facing the
7 rear, if you will, it's about six and a half inches.

8 Q And you noted that there was a dent and some
9 paint chips that you identified above the lift gate,
10 correct?

11 A Correct.

12 Q How far away from the right side of the
13 vehicle were those scratches and that dent?

14 A Approximately 20 inches.

15 Q What was the significance of that, that
16 distance?

17 A Well, again, to go back to your question
18 about, I think, if somebody was holding a drinking
19 glass, right, and their arm was extended to cause that
20 damage or if it's theorized that those dents and chips
21 were from that, again, the thing that sticks out to me
22 is that you have essentially the Lexus taillight --

23 MR. LALLY: Objection, Your Honor.

24 THE COURT: So ask another question.

25 BY MR. JACKSON:

1 Q What is the significance of whether or not
2 there was damage between the dent in the taillight, in
3 other words, that 20-inch area? Was it dented? Was it
4 deformed in any way?

5 A So in terms of again if we're talking about,
6 again, looking at the back of the vehicle and we go to
7 kind of where that right tail lamp just meets the lift
8 gate, as I mentioned, there is another lamp assembly on
9 the lamp gate, itself. There is also a chrome trim
10 piece above that and certainly the body paneling to the
11 lift gate, itself.

12 And I think what stood out to me is that
13 between that dent and the fractured taillight, there
14 was no observable damage to that area, which I would
15 have expected had an arm been positioned there.

16 Q Can you calculate or could you calculate or
17 did you calculate the amount of force that would be
18 required to strike a person just only on the
19 outstretched portion of his arm in order to project him
20 a number of feet, for instance, 30 feet, in one
21 direction or another?

22 A Okay. I just want to make sure I --

23 MR. LALLY: Objection.

24 THE COURT: Take the distance out of it.

25 Break it down.

1 BY MR. JACKSON:

2 Q I'll ask you the same question but without the
3 30 feet.

4 A Okay.

5 Q Were you able to calculate or could you
6 calculate the force that would be required to strike a
7 person on his outstretched arm hard enough to spin him
8 around and project him a number of feet?

9 A If you're talking about only an interaction
10 between the arm and the back of the vehicle, no. There
11 wouldn't be any projection. Again, if you think about
12 -- the arm weighs about, again, with Mr. O'Keefe, it
13 would be about 11 pounds. So you still have, you know,
14 another 200-plus pounds being held down by gravity, and
15 the force is only acting on the arm. So essentially,
16 the arm would be accelerated but the whole body,
17 because the center of mass is not being struck, would
18 not be projected.

19 Q Is the absence of the damage that you
20 described, the absence of damage that you described
21 between the dent and the rest of the vehicle with the
22 exception of the taillight, is that consistent or
23 inconsistent with striking an arm, an outstretched arm
24 of a human being?

25 MR. LALLY: Objection.

1 THE COURT: I'll allow that.

2 THE WITNESS: That would be inconsistent in my
3 opinion.

4 MR. JACKSON: May I have just a moment, Your
5 Honor?

6 THE COURT: Yes.

7 BY MR. JACKSON:

8 Q And what is your opinion, Doctor, as to the
9 amount of damage that you would expect to see at 15
10 miles per hour or above on the taillight if, in fact,
11 that vehicle were moving in reverse and were to strike
12 something on a human body, for instance, an elbow or an
13 arm?

14 MR. LALLY: Objection.

15 THE COURT: I'll allow that.

16 THE WITNESS: I'm sorry. Can you repeat the
17 question?

18 BY MR. JACKSON:

19 Q Probably not.

20 A Sorry.

21 Q I'll try. From your testing, what would you
22 expect to see in terms of the damage to the right rear
23 taillight if, in fact, that taillight were to make
24 contact with a part of a human body, for instance, an
25 elbow or an arm, at 15 miles an hour or above? What

1 would the level of damage be as compared to the damage
2 that you actually saw?

3 A Well, if we compare it to, again, looking at
4 the drop test that we did with the hybrid head which
5 weighs about 10 pounds -- so again, if we are talking
6 about now a human arm that's comparable and that same
7 weight, we certainly would expect to see a comparable
8 level of force and damage.

9 So as I mentioned, if the arm is outstretched
10 across the right tail lamp and into the lift gate
11 section, I would certainly expect to see deformation to
12 that body paneling, even potentially the taillight on
13 the lift gate, itself, and that chrome piece, as well.

14 Q Based on the entirety of your investigation,
15 your entire team's investigation, all the testing that
16 you did, all the biomechanical testing and the
17 engineering and the physics testing that you did, in
18 your expert opinion, was that taillight damaged by
19 striking John O'Keefe on the head?

20 MR. LALLY: Objection.

21 THE COURT: Sustained.

22 BY MR. JACKSON:

23 Q In your opinion, was the taillight damaged by
24 either striking Mr. O'Keefe on the head or the arm?

25 MR. LALLY: Objection.

1 THE COURT: Sustained.

2 MR. JACKSON: May we approach?

3 THE COURT: Yes.

4 (Whereupon, there was a sidebar conference as
5 follows:)

6 THE COURT: Go ahead and state your objection
7 for the record.

8 MR. LALLY: I believe it is beyond the scope
9 of what the Court specifically said these witnesses
10 could testify about.

11 THE COURT: Yes. He can't get into
12 specifically Mr. O'Keefe. He can do general but
13 not Mr. O'Keefe. He's not a doctor. He cannot
14 talk about him.

15 MR. JACKSON: I haven't asked him a single
16 thing about the injuries to the body because that's
17 connecting -- striking a human head or striking an
18 arm. I can change it.

19 THE COURT: You said "John O'Keefe" three or
20 four times.

21 MR. JACKSON: Okay.

22 THE COURT: It's specific versus general. You
23 know the case law on this.

24 THE CLERK: We need a bathroom break.

25 THE COURT: Is this your last question?

1 MR. JACKSON: My last question.

2 THE COURT: Yes.

3 (Whereupon, the sidebar conference concluded.)

4 MR. JACKSON: May I, Your Honor?

5 THE COURT: Yes.

6 BY MR. JACKSON:

7 Q Last question, Doctor. In your expert
8 opinion, based on all your testing, is the damage to
9 the taillight that you saw consistent with striking a
10 human head?

11 A No.

12 Q In your expert opinion, is the damage to the
13 taillight consistent with striking a human arm?

14 A No.

15 MR. JACKSON: Thank you. That's all I have.

16 THE COURT: All right. Jurors, we will take
17 our morning recess.

18 (Whereupon, the jury is escorted from the courtroom
19 and a brief recess is taken.)

20 (Court resumes.)

21 (Defendant present. Jury present.)

22 THE COURT: Mr. Lally, whenever you're ready.

23 CROSS-EXAMINATION

24 BY MR. LALLY:

25 Q Good morning, sir.

1 A Good morning.

2 Q Now, you, in conjunction with, I'm sorry,
3 Dr. Rentschler, is that correct --

4 A Dr. Rentschler, yes.

5 Q Yes. So you, in conjunction with
6 Dr. Rentschler --

7 THE COURT: Keep your voice up, Mr. Lally.

8 MR. LALLY: Yes, Your Honor.

9 BY MR. LALLY:

10 Q You, in conjunction with Dr. Rentschler and
11 Dr. Kline wrote a report in regard to your analysis
12 here, correct?

13 A Correct.

14 Q And, Doctor, that report was issued on
15 February 12th, 2024; is that correct?

16 A Correct.

17 Q And, in the first paragraph of that report,
18 the last two sentences, you or whoever the author of
19 that particular portion indicates (as read), "This
20 analysis is based on information currently available to
21 ARCCA and is only to be issued in its entirety.
22 However, ARCCA reserves the right to supplement or
23 revise this report if additional information becomes
24 available"; is that correct?

25 A Correct.

1 Q And that's pretty standard as far as your
2 industry is concerned? You can only work with the
3 information that you're provided; is that correct?

4 A Certainly.

5 Q Now, in this instance, you were provided 10
6 things and then there were four additional things that
7 either you or the other doctors had reviewed as far as
8 literature or things of that nature; is that fair to
9 say?

10 A Correct.

11 Q And the 10 things that you were talking about
12 were reports, an initial crime scene report, medical
13 examiner dispatch remover report; is that correct?

14 A Correct.

15 Q Photographs of the incident location; is that
16 correct?

17 A Correct.

18 Q And how many sets of photographs of the
19 incident location were you provided with?

20 A In terms of the number of photographs?

21 Q The number of photographs, or were there
22 different sets of photographs?

23 A Yes.

24 Q And how many sets?

25 A I don't recall off the top of my head. I know

1 that there was a series that were taken during the
2 daytime as well as ones taken in what appeared to be
3 the early morning hours.

4 Q And you were also provided video from the
5 early morning hours; is that correct?

6 A From what I recall, I think it was daytime,
7 but yes.

8 Q Photographs of the vehicle, photographs of
9 recovered evidence; is that correct?

10 A Correct.

11 Q C.D.R. report from the 2021 Lexus LX 570,
12 correct?

13 A Correct.

14 Q Autopsy report, autopsy photographs; is that
15 correct?

16 A Correct.

17 Q And then some other things. Those would be
18 the 10 things that you were provided with, and then
19 there were four other things that you reviewed or part
20 of your team reviewed; is that correct?

21 A Correct.

22 Q Now, in regard to -- there is a section in
23 your report called "Review of Materials," and it talks
24 about photographs and glass fragments and plastic
25 fragments and things of that nature, correct?

1 A Correct.

2 Q You also talk about a black drinking straw
3 that was recovered on scene; is that correct?

4 A Correct.

5 Q However, there is no mention in the report
6 about Mr. O'Keefe's shoe or Mr. O'Keefe's hat. Are you
7 aware of those items, as well?

8 A Yes.

9 Q And are you aware that Mr. O'Keefe's shoe was
10 actually found dug out from the snow, sort of flush
11 with the curbing in front of the area where his body
12 was found?

13 A Yes.

14 Q Now, over the course of your work as a crash
15 reconstructionist -- and, again, I don't mean this in
16 any way, shape or form but I'm just curious.
17 Typically, you're reconstructing or you're looking at
18 someone else's reconstruction in relation to something
19 that occurred in the past, correct?

20 A Not always, no.

21 Q Well, my question is, sir, how many times have
22 you actually been on like a live scene where the
23 vehicles are still in place at final rest, whether a
24 body is in place at final rest? Have you ever been to
25 a scene where those sort of conditions existed?

1 A Certainly. We have a rapid response team that
2 essentially we've been on site on the day of or the
3 week of the incident. Yes.

4 Q Okay. Now, how often is that?

5 A Not nearly as often as -- like I said earlier,
6 we primarily do litigation work. So again, by the time
7 we're retained, obviously the scene is no longer
8 present.

9 Q The scene has been cleared and items have been
10 removed as far as evidence or other things. That's
11 mostly what you deal with, correct?

12 A Sure.

13 Q And, as far as the hat that we were talking
14 about before, are you aware that that was recovered, as
15 well, the same day as the drinking straw on February
16 3rd in the area of where the body of Mr. O'Keefe was
17 discovered?

18 A In the area of the front yard, yes.

19 Q Okay. Now, you have some familiarity through
20 working as a crash reconstructionist with pedestrian
21 collisions, correct?

22 A Correct.

23 Q Is it common or uncommon in the course of a
24 pedestrian collision for a shoe or glasses or hat or
25 something to fall off of that pedestrian in the

1 collision sequence near where the area of impact
2 occurs?

3 A Well, I think that depends on the interaction
4 between the two. We are talking if it's more of a
5 sideswipe-type interaction, if we are just talking
6 about an arm, for instance, in contact with the
7 vehicle, no. I would not expect the shoe to come off.

8 If it's something where the entire body is
9 interacting with the vehicle, then yes. There is a
10 greater likelihood that something like a shoe will come
11 off. Yes.

12 Q So that is consistent in general terms with a
13 pedestrian collision of a shoe coming off, correct?

14 A Again, based on the interaction between the
15 two. I wouldn't say that it's a blanket statement
16 that, again, in all pedestrian interactions you will
17 have a shoe come off.

18 Q That's not the question I was asking, sir.
19 What I'm asking is, is it generally consistent with
20 pedestrian collisions that a shoe may come off during
21 the collision sequence near the area of impact?

22 A Shoes can come off in a pedestrian impact,
23 yes.

24 Q Okay. Now, again, you were testifying earlier
25 about the damage to the Lexus being isolated in the

1 area of the taillight, correct?

2 A Correct.

3 Q And that was based on the information that you
4 were provided, correct?

5 A Correct.

6 Q Now, with respect to any of the materials that
7 you were provided, was there anything in the materials
8 that you were provided that indicated that just the arm
9 or an outstretched arm of Mr. O'Keefe interacted with
10 the vehicle?

11 A No.

12 Q And, based on your review of any of the
13 materials that you were provided, was there any
14 information stating that Mr. O'Keefe had been struck in
15 the back of the head by the taillight assembly of the
16 Lexus?

17 A No.

18 Q And, based on any of the materials -- let me
19 ask you, based on any of the materials that you
20 provided, were you aware that Mr. O'Keefe is on video
21 exiting from a bar minutes before the crash occurs at
22 approximately 12:11 a.m., holding a cocktail glass in
23 his right hand?

24 A I'm not aware of that video.

25 Q Now, other than the materials that we just

1 went over as far as the 10 things that you were
2 provided, you weren't provided anything else; is that
3 correct?

4 A That would be correct.

5 Q And so sort of the questions that you
6 endeavored to answer, those were questions that you
7 didn't note from any of the materials that you were
8 provided; is that correct?

9 A If I understand your question correctly, there
10 was nothing in the material that indicated the
11 questions we were to answer, if that's what your
12 question was.

13 Q That is my question. So there as nothing in
14 there; is that correct?

15 A Correct.

16 MR. LALLY: Okay. If I may have a moment,

17 Your Honor?

18 THE COURT: Yes.

19 BY MR. LALLY:

20 Q You talked a bit about you have some extensive
21 background in human factors, correct?

22 A Correct.

23 Q And, as far as visibility, in particular, have
24 you ever conducted a visibility analysis?

25 A Absolutely. Hundreds of times.

1 Q And you talked a little bit about conspicuity;
2 is that correct?

3 A Yes.

4 Q And part of conspicuity, at least one of the
5 factors, would be a reasonable expectation of -- in
6 particular when you're talking about a pedestrian
7 collision, part of the conspicuity factors would
8 include sort of a reasonable expectation that a
9 pedestrian would be in the path of a vehicle; is that
10 fair to say?

11 A I don't understand your question.

12 Q Sure. When you're talking about conspicuity
13 or visibility analysis, in particular, you're talking
14 about something called PRT or perception reaction time,
15 correct?

16 A Well, that occurs after recognition. So
17 first, a driver has to recognize that there is a
18 pedestrian there before they can actually respond to
19 it. So once they have recognized the pedestrian, then
20 you start the perception response time where, again,
21 the driver has identified what the hazard is. They are
22 making a decision about what to do. They might be
23 moving their foot from the accelerator pedal to the
24 brake pedal. So again, that's kind of the action or
25 the time frame in which the driver is undergoing action

1 to potentially mitigate the collision.

2 Q And perception reaction time, that's a pretty
3 commonly used industry sort of standard as far as crash
4 reconstruction goes, correct?

5 A Well, I would say that it's used in the field
6 of accident reconstruction. But, as I mentioned
7 earlier in my testimony, there isn't a blanket number
8 in terms of perception response time. As I mentioned,
9 it is based upon the hazard that the driver is
10 presented with.

11 Again, if you've got a pedestrian crossing the
12 roadway, that is going to be one particular perception
13 response time based upon studies and naturalistic data
14 versus a driver suddenly stopping in front of you.
15 Right? It's not the same perception response time in
16 every scenario.

17 Q Understood. And there's different variables
18 that may affect that as far as someone's age, as far as
19 the lighting that's available, other things; is that
20 correct?

21 A Sure.

22 Q And one of those things might be the
23 reasonable expectation of a pedestrian being present in
24 the roadway as you're driving along, correct?

25 A Expectancy can play a role, yes.

1 Q Expectancy, what we're talking about, is sort
2 of the disparity or the difference between driving
3 along a country road where there's no houses for miles
4 and miles versus an urban area where there's crosswalks
5 every 15 feet, correct?

6 A Sure.

7 Q Okay. Now, in that expectation of privacy,
8 how high would that be if we are talking about a
9 pedestrian that actually exited from the vehicle that
10 then strikes them?

11 A I don't understand your question.

12 Q Let me ask you this: If the operator of the
13 vehicle has a passenger who then exits the vehicle and
14 goes towards the back, would there be a high reasonable
15 expectation that the pedestrian would be located in
16 that area?

17 A I don't know if I would classify it as high.

18 Q What would you classify it as?

19 A I honestly don't know that I have a
20 classification to it.

21 Q Now, you never looked at the defendant's
22 vehicle in this case, correct?

23 A Correct.

24 Q Are you aware that the defendant's vehicle is
25 still in police custody and available for inspection?

1 A I'm not aware of that.

2 Q Okay. Did you ever ask to look at the
3 defendant's vehicle?

4 A No.

5 Q Now, a typical pedestrian strike for the most
6 part involves a pedestrian in front of a vehicle as
7 it's coming down a street; is that fair to say?

8 A That could be one type of interaction, yes.

9 Q Okay. Is that more prominently seen as far as
10 your field than a rear collision?

11 A I would say that's fair.

12 Q Okay. And there are various types of sort of
13 interactions that the pedestrian can have with the
14 vehicle in order to cause and sort of sustain injuries;
15 is that fair to say?

16 A What I would say is that there is certainly,
17 in terms of how the pedestrian interacts with the
18 vehicle in terms of whether they're being wrapped onto
19 the vehicle or projected forward, certainly there's
20 different types of interactions, yes.

21 Q Okay. So there is like a wrap and forward
22 projection type of collision sequence; is that correct?

23 A Those are two common, yes.

24 Q There is also something called a fender vault;
25 is that correct?

1 A Correct.

2 Q And sort of how or where that pedestrian is
3 positioned with relation to the vehicle is somehow or
4 somewhat determinative of the injury sustained; is that
5 correct?

6 A It can be, yes.

7 Q Obviously, you're going to see different
8 injuries if someone fender vaults and goes over the top
9 of the vehicle versus someone who is projected forward
10 from the collision sequence with the front of the
11 vehicle?

12 A Just to clarify, again, in this matter, I was
13 not assessing injuries. That was Dr. Rentschler.

14 Q No. I understand. What I'm saying is based
15 on your experience, though, you understand that there
16 is a difference of the injuries that you might expect
17 based on the type of interaction that a pedestrian has
18 with a vehicle?

19 A Yes.

20 Q And then if someone is wrapped and forward
21 projection and then the vehicle overruns that person,
22 there would be a whole host of other injuries that
23 you'd expect to see based on being overrun by the
24 vehicle, correct?

25 A There could be, yes.

1 Q Now, the testing that you did with respect,
2 these are essentially experiments that you're doing,
3 correct?

4 A That's fair, yes.

5 Q And am I correct in saying that in scientific
6 experiments or in the world of scientific experiments,
7 there are certain things called variables that you're
8 trying to account for; is that correct?

9 A I would say that's fair, yes.

10 Q And, essentially, what you're trying to do is
11 control as many of those variables as you can in order
12 to best replicate whatever the conditions were at the
13 time that what you're testing to see actually occurred;
14 is that correct?

15 A Correct.

16 Q Now, what, if anything, did you do to control
17 variables in relation to temperature?

18 A So one of the things that we did with all of
19 the tail lamp assemblies that we tested is that we
20 preconditioned them to approximately 28 degrees so
21 they'd reached a steady-state temperature before we
22 subjected them to the impact testing.

23 Q And where in your report does it say that?

24 A I don't believe that's explicitly stated.

25 Q Is it implicitly stated anywhere in your

1 report?

2 A Again, I'm telling you that's part of what we
3 did for the testing.

4 Q I understand that's what your testimony is.
5 But you wrote a report, correct?

6 A Right. And I don't know that I detailed every
7 single part of the test. Again, we summarized it.

8 Q Understood. So what did you do to control any
9 variable as far as wind?

10 A Well, when you're talking about a projectile
11 such as a glass, again, that's being projected at 37
12 miles per hour, again, there would be probably minimal
13 effects in terms of the wind.

14 Q Even if there was a blizzard going on?

15 A Again, what we are going after here is
16 ultimately conducting a test such that the drinking
17 glass arrived at the location of the taillight. So if
18 you're trying to say that, okay, he threw it this way
19 and the wind blew it towards the taillight, sure. That
20 could be a possibility.

21 Q And, sir, I'm not trying to say anything. I'm
22 just asking are you aware that there was a blizzard and
23 that there were wind gusts up to 37 miles per hour
24 during the time that this collision occurred and that's
25 not accounted for in your testing?

1 MR. LALLY: Objection.

2 THE COURT: Were you aware of that, sir?

3 THE WITNESS: I am aware that there was
4 inclement weather at the time, yes.

5 BY MR. LALLY:

6 Q Now, with respect to -- what type of glass did
7 you use?

8 A So we used a rocks drinking glass. So that's
9 a glass that has a thicker base and a shallower
10 sidewall.

11 Q And so what I'm asking, sir, was it a cocktail
12 glass? Was it a pint glass? What kind of drinking
13 glass are we talking about?

14 A A rocks drinking glass.

15 Q And how tall is that rocks drinking glass that
16 you used?

17 A If I had to estimate, I think it was about
18 three or four inches tall, probably.

19 Q And the thickness, did you measure that as far
20 as the thickness of the bottom of the glass?

21 A No.

22 Q Was the thickness of the bottom of the glass
23 thicker or -- more thick or less thick than the top of
24 the glass?

25 A Are you talking about in comparison to the

1 sidewall of the glass?

2 Q I'm talking about in comparison to itself. So
3 you have a glass, this rocks glass. Was the bottom
4 thicker or the top thicker?

5 A The sidewall would be taller, if you will,
6 than the base.

7 Q And so when you're projecting this thing out
8 of the device that you created, whatever it was, are
9 you facing sort of the top of the glass where you would
10 be sipping out of or the bottom of the glass at the
11 taillight?

12 A So in the testing, the interaction between the
13 taillight and the glasses was primarily between the
14 base and the taillight.

15 Q Now, with reference to -- I asked you a
16 little bit about the video, and you weren't aware of
17 Mr. O'Keefe exiting from the Waterfall bar at 12:11 in
18 the morning about 15 or 20 minutes before he's struck
19 by a vehicle. You're not aware of that?

20 A I'm not aware of that.

21 Q Now, with reference to that particular
22 establishment, was there anything stopping you or the
23 other doctors that you were working with from going to
24 that establishment, finding out what kind of glasses
25 they had, getting an actual cocktail glass from that

1 establishment?

2 A I had no idea that video existed.

3 Q Did you even know that Mr. O'Keefe was even at
4 a bar before he was struck by the vehicle?

5 A I believe that in one of the incident reports
6 that we reviewed that there was, I think, a narrative
7 about that they had been at a bar, drinking. Yes.

8 Q How is it that you determined where on the
9 taillight assembly to aim?

10 A So we looked at the fracture pattern. And
11 what it appeared to be, that it was emanating from
12 basically where the clear portion meets the red cover.
13 We kind of saw that the fracture pattern emanated from
14 that. So that's where we targeted it.

15 Q Now, when you did this testing as far as the
16 sort of breakage or the pieces that came off of the
17 taillight, is it fair to say that they were sort of
18 different shapes and sizes, the broken pieces?

19 A Sure.

20 Q Okay. Consistent with the broken pieces that
21 were found on the scene near Mr. O'Keefe's body?

22 A Yes. I would say that's fair.

23 Q Now, I know you may not be the person for this
24 but just as far as you reviewed some of the autopsy
25 report medical findings in regard to Mr. O'Keefe,

1 correct?

2 A Correct.

3 Q And the injuries from Mr. O'Keefe were
4 primarily on the right side of his body, correct?

5 A Correct.

6 Q So there were injuries to his right arm and
7 forearm, elbow area, correct?

8 A Correct.

9 Q There was bruising to his right hand? Do you
10 recall that?

11 A Yes.

12 Q There was an abrasion to the outside or the
13 posterior of his right leg near his knee? Do you
14 recall that?

15 A I don't know that I recall that off the top of
16 my head.

17 Q And do you recall sort of the skull fracture
18 or the laceration that immediately outside of the skull
19 fracture was on sort of the right back of his head?

20 A Yes.

21 Q Now, from the reports that you reviewed, were
22 you aware that when Mr. O'Keefe's body was discovered
23 by the defendant and two of Mr. O'Keefe's friends that
24 the defendant was the only one who could see him in the
25 conditions?

1 MR. JACKSON: Objection.

2 THE COURT: Sustained.

3 BY MR. LALLY:

4 Q As far as the lighting was concerned in that
5 area where Mr. O'Keefe's body was found, are you aware
6 there was no overhead street, ambient lighting or
7 anything like that?

8 MR. JACKSON: Objection.

9 THE COURT: I'll allow that.

10 THE WITNESS: I'm not aware of that.

11 BY MR. LALLY:

12 Q And you didn't do any visibility analysis or
13 anything in relation to this case, correct?

14 A That wasn't a part of my scope in this case.

15 Q Well, as far as part of your scope, did you
16 -- you indicated earlier that there were questions that
17 you didn't find in the materials that you asked and
18 conducted experiments to prove or disprove, correct?

19 A Well, again, the entity that retained us in
20 this asked us to evaluate whether or not the damage to
21 the vehicle and the injuries to Mr. O'Keefe were
22 consistent with the interaction or an interaction
23 between the two.

24 Q So you were at least somewhat restricted in
25 the scope of what you could do based upon the

1 parameters given to you by the agency that hired you;
2 is that fair to say?

3 A Sure.

4 Q Now, as far as any statements by the defendant
5 to investigating troopers either that afternoon or that
6 morning when Mr. O'Keefe's body was discovered, were
7 you familiar with any of those?

8 MR. JACKSON: Objection.

9 THE COURT: I'll allow that.

10 THE WITNESS: I'm not familiar with it.

11 MR. JACKSON: May we approach briefly?

12 THE COURT: Sure.

13 (Whereupon, there was a sidebar conference as
14 follows:)

15 THE COURT: The nature of the objection?

16 MR. JACKSON: Relevance.

17 THE COURT: What do you say, Mr. Lally?

18 MR. LALLY: It's entirely relevant whether or
19 not he's aware that the defendant stated to
20 multiple people, I hit him, I hit him, I hit him,
21 immediately upon arriving on scene and, if he's not
22 aware of it, whether or not that would have
23 impacted his analysis.

24 MR. JACKSON: His analysis was relegated to
25 physical evidence. He said it five different

1 times. He was asked to do one thing. The scope of
2 his request was given the damage to the vehicle and
3 given the injuries to the person, was there an
4 interaction between the two that would account for
5 this. It has nothing to do with lighting
6 conditions. It has nothing to do with whether or
7 not John O'Keefe's body was three feet or five feet
8 from the roadway. It has nothing to do with
9 whether or not she said, I hit him. It has nothing
10 to do with the hair on the bumper or whether they
11 were drinking at the bar beforehand.

12 Mr. Lally is asking questions to try to get
13 his theory of the case in but this is not relevant
14 whether he said something or she said something.
15 It has nothing to do with the physical evidence
16 that he was asked to evaluate.

17 THE COURT: Okay. You are overruled. I will
18 let it in.

19 (Whereupon, the sidebar conference concluded.)

20 BY MR. LALLY:

21 Q So, Doctor, with regard to the defendant's
22 statements at any point, were you -- did you review
23 materials or were you made aware that the defendant
24 said to multiple people on scene, I hit him. I hit
25 him. I hit him. I hit him?

1 A I'm not aware of that.

2 MR. LALLY: If I may have a moment, Your
3 Honor?

4 THE COURT: Yes.

5 BY MR. LALLY:

6 Q Now, within the reports that you and the other
7 doctors submitted, there is an indication that if
8 either Mr. O'Keefe's arm or head had interacted with a
9 taillight, there would be some expectation that either
10 blood or DNA would be contained on that taillight; is
11 that correct?

12 A I believe, yes, that was stated in the report.

13 Q And at any point were you made aware that
14 Mr. O'Keefe's DNA actually was recovered from that
15 taillight assembly from the defendant's vehicle?

16 A No, I was not.

17 Q Now, as far as forensic reports, what, if
18 anything, were you provided in reference to that other
19 than the initial crime scene report?

20 A Are you talking about specific to the scene or
21 forensic reports to the body?

22 Q Forensic reports specific to the evidence that
23 was recovered from the scene and from the defendant's
24 vehicle.

25 A Only what would be listed in the report.

1 Q Now, you indicated one of the materials that
2 you were provided and you reviewed was the EDR, the
3 event data recorder data?

4 A The crash data retrieval report, yes.

5 Q Okay. Now, were you shown anything as far as
6 a crash reconstruction report from a trooper from the
7 state police?

8 A No.

9 Q And the EDR data that you observed, did that
10 contain any sort of useable data?

11 A There was no events recovered on the black
12 box.

13 Q And, with respect to there being no events
14 recovered on the EDR or the black box, in a pedestrian
15 collision, is that unusual?

16 A It is not.

17 Q And why not?

18 A Well, because you're talking about a very
19 large weight difference between the vehicle and the
20 pedestrian. So, ultimately, what the vehicle is
21 constantly monitoring is acceleration, which gets back
22 to a term called Delta-V. So when the vehicle doesn't
23 experience a big Delta-V, typically the threshold for a
24 nondeployment event where you're not firing airbags or
25 any safety mechanisms, but the vehicle wakes up and

1 says, hey, there was something I potentially hit. And
2 it's usually at a threshold of about five miles per
3 hour. So again, given the weight difference, we
4 usually don't see Delta-Vs that high with pedestrians.

5 Q And is that in some respects because what the
6 EDR and what the safety restraint systems are designed
7 to protect is the occupants of the vehicle, correct?

8 A That's fair, yes.

9 Q I mean, there are more innovations as far as
10 vehicles that are more modern or released earlier that
11 have certain pedestrians or protections for other
12 vehicles but primarily what they're focused on is the
13 occupants of the vehicle, correct?

14 A Correct.

15 Q Okay. Now, at any point in time, were you
16 shown at text stream data, Toyota text stream data,
17 from the defendant's vehicle?

18 A No.

19 Q So you weren't shown any data indicating
20 that the defendant's vehicle was being operated in
21 reverse --

22 MR. JACKSON: Objection.

23 THE COURT: The objection is sustained. Next
24 question.

25 BY MR. LALLY:

1 Q So with regard to the defendant's statements,
2 were you also not told that the defendant told several
3 people that she had just gotten into a fight with
4 Mr. O'Keefe --

5 MR. JACKSON: Objection.

6 MR. LALLY: -- right before she dropped him
7 off at 34 Fairview Road?

8 THE COURT: That is sustained.

9 BY MR. LALLY:

10 Q Now, with regard to pedestrian collisions,
11 you're familiar with sort of the physics term, I'm
12 presuming, Doctor, as far as like "center of mass"?

13 A Yes.

14 Q And what kind of role does the center of mass
15 for a pedestrian play in relation to the center of mass
16 of a vehicle as far as how the two interact?

17 A Well, it depends again on the vehicle
18 structure. And, again, when you're talking about where
19 is the hood height, the bumper height and the C.G. or
20 the center of gravity of the pedestrian, that again
21 will kind of dictate how they interact between the
22 vehicle and the pedestrian.

23 Q Now, typically, the typical pedestrian
24 collision again that we were speaking about before is
25 in relation to a pedestrian struck by the front of a

1 vehicle, correct?

2 A Correct.

3 Q And so in a typical pedestrian collision, that
4 involves more of an assumption of the velocity of the
5 striking vehicle than you would see occur in sort of a
6 sideswipe; is that correct?

7 A I'm sorry. Could you repeat the question?

8 Q Sure. In a typical pedestrian collision that
9 would involve more of an assumption of the velocity of
10 the striking vehicle by the pedestrian than you would
11 see in a typical sideswipe collision; is that correct?

12 A If I understand your question correctly, yes.
13 If the vehicle is striking the center gravity of a
14 pedestrian as opposed to just, for instance, the limb,
15 yes. The center of gravity or the body will be
16 accelerated up to that speed.

17 Q Now, with respect to the defendant's vehicle,
18 again, you never actually looked at the defendant's
19 vehicle; is that correct?

20 A It wasn't necessary.

21 Q Okay. And did you look at the actual
22 taillight housing from the defendant's vehicle?

23 A I had sufficient photographs of the taillight.

24 Q Did you ever look at the actual physical
25 broken pieces of the taillight from the defendant's

1 vehicle?

2 A Again, I had sufficient photographs that
3 documented the fragments and pieced them together.

4 Q And you're aware at least that the fragments
5 that were recovered on scene were then sort of put back
6 together and put overlay, over the taillight housing
7 that was taken from the defendant's vehicle?

8 A Yes.

9 Q And through any of the pictures or the photos
10 that you observed, did you ever see a piece of metal
11 protruding underneath the broken and shattered plastic
12 pieces from the taillight?

13 A I believe it was a plastic chrome piece.

14 Q Now, when you were doing the testing as far as
15 shooting the glass, the drinking glass, at the
16 taillight assembly, that taillight assembly was sort of
17 held there by vice grips or something like that; is
18 that correct? It wasn't actually physically attached
19 to a vehicle, the one that you were shooting at?

20 A That's correct.

21 Q Now, as far as that -- you're familiar with
22 there was a piece of a broken drinking glass that was
23 recovered from the same area of where Mr. O'Keefe was
24 found; is that correct?

25 A Amongst the fragments of the taillight, yes.

1 Q And are you familiar with Mr. O'Keefe's DNA
2 being present on those pieces of the exterior of a
3 broken drinking glass located near his body?

4 A I don't believe so.

5 Q Now, as far as Mr. O'Keefe's clothing, his
6 fingernails, are you aware that there was DNA of
7 Mr. O'Keefe and no one else recovered from both his
8 fingernails and from a variety of areas of his
9 clothing?

10 MR. JACKSON: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. LALLY:

13 Q Now, from the crime scene reports that you
14 reviewed, are you aware that there was a human hair
15 that was located on the right rear quarter panel near
16 the dent that you were talking about?

17 MR. JACKSON: Objection.

18 THE COURT: I'll allow it.

19 THE WITNESS: Yes.

20 BY MR. LALLY:

21 Q Are you familiar or are you aware that
22 subsequent mitochondrial DNA testing found that the
23 mitochondrial DNA profile for that hair was consistent
24 to a probability of 99.895 percent with the
25 mitochondrial DNA profile of Mr. O'Keefe?

1 A I'm not aware of that.

2 Q Now, were you also aware that the broken
3 drinking glass with Mr. O'Keefe's DNA on it was found
4 to be consistent with the broken drinking glass pieces
5 that were found in the street?

6 MR. JACKSON: Objection.

7 THE COURT: I'll allow that.

8 THE WITNESS: Can you repeat the question?

9 BY MR. LALLY:

10 Q Sure. Were you aware that the pieces from the
11 exterior of the broken drinking glass found near
12 Mr. O'Keefe's body with his DNA on it were then found
13 to be consistent with pieces of broken drinking glass
14 that were located in the street of 34 Fairview Road?

15 A Yes.

16 Q Were you also aware that pieces of glass that
17 you were talking about from the defendant's bumper were
18 found to be consistent with pieces of glass recovered
19 from the street in front of 34 Fairview Road?

20 A Yes.

21 Q Were you aware that there were microscopic
22 pieces of red and clear plastic, about a sixteenth of
23 an inch by a sixteenth of an inch, that were recovered
24 from Mr. O'Keefe's clothing that were then found to be
25 consistent with the taillight?

1 A No. I don't believe so.

2 Q Now, as far as -- again, you weren't provided
3 with any sort of reconstruction report from a
4 Trooper Proctor from the state police?

5 A No, I was not.

6 Q So you're not aware that he took measurements
7 from the ground to where certain items were on the
8 vehicle?

9 MR. JACKSON: Objection. Objection, Your Honor.

10 THE COURT: The objection is sustained. He
11 didn't see the report.

12 MR. JACKSON: Your Honor, can we approach?

13 THE COURT: Sure.

14 (Whereupon, there is a sidebar conference as
15 follows:)

16 THE COURT: Your objection for the record?

17 MR. JACKSON: It's improper questioning. You
18 can't ask a question, are you aware of something,
19 and the answer is, no, I'm not aware of something
20 and then in followup, so you're not aware of that,
21 and then make your argument in a question.

22 THE COURT: It's been done quite a bit --

23 MR. JACKSON: Not by me. I don't do that.

24 THE COURT: -- during this trial. I'm --

25 MR. JACKSON: Judge, I'm --

1 THE COURT: Excuse me. I'm sustaining the
2 objection.

3 MR. JACKSON: Okay.

4 (Whereupon, the sidebar conference concluded.)

5 MR. LALLY: May I have a moment, Your Honor?

6 THE COURT: Yes.

7 MR. LALLY: My apologies, Your Honor. Just
8 one moment?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q Now, Doctor, in the course of your analysis or
12 review of materials here, were you ever provided with a
13 video of the defendant backing out a garage and making
14 contact with Mr. O'Keefe's vehicle in his driveway at
15 about 5:07 in the morning on January 29th?

16 A No.

17 Q Now, as far as from your review and your
18 testing and everything that you did in this case, if a
19 collision occurred at a lower speed, say, one, two,
20 anywhere from zero to five miles an hour, would that
21 create the damage to the taillight that you observed in
22 this particular case?

23 A At that speed, no.

24 Q So there are about 10 items that you were
25 provided that you reviewed; is that correct?

1 A Correct.

2 Q And a number of different items that I just
3 asked you about that you weren't provided with or you
4 weren't aware of, correct?

5 A Correct.

6 Q And, again, in your report in the very first
7 paragraph, you indicate (as read), "However, ARCCA
8 reserves the right to supplement or revise this report
9 if additional information becomes available," correct?

10 A Correct.

11 MR. LALLY: I have nothing further, Your
12 Honor.

13 THE COURT: All right. Mr. Jackson?

14 MR. JACKSON: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. JACKSON:

17 Q Very briefly, Dr. Wolfe. You were asked on
18 cross-examination a couple of questions about a hair,
19 DNA on the outside of the taillight lens -- I'm sorry
20 -- the taillight housing and glass material. Do you
21 recall that?

22 A Yes.

23 Q Does any of that change your opinion about --
24 your opinions and conclusions in this case?

25 MR. LALLY: Objection.

1 THE COURT: I'll allow that.

2 THE WITNESS: Absolutely not.

3 BY MR. JACKSON:

4 Q What is your conclusion as to whether or not
5 the damage to the vehicle and the injuries to the human
6 being are consistent or inconsistent with vehicle
7 interaction?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 MR. JACKSON: Nothing further.

11 THE COURT: All right. Dr. Wolfe, you are all
12 set, sir.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness is excused.)

15 MR. JACKSON: May I?

16 THE COURT: Yes.

17 MR. JACKSON: Your Honor, we would ask
18 Dr. Andrew Rentschler to join us, please.

19 THE COURT: Okay. While he is coming in, just
20 very quickly about scheduling.

21 (Whereupon, there was a sidebar conference as
22 follows:)

23 THE COURT: How long do you think you'll be
24 with him?

25 MR. JACKSON: Less time than with Dr. Wolfe.

1 THE COURT: Okay. How long do you think
2 you'll be with him?

3 MR. LALLY: Probably a little bit less than
4 Dr. Wolfe.

5 THE COURT: I'd like to go a little past one
6 if we can because I have a short matter at two. So
7 even as long as maybe 1:20.

8 MR. JACKSON: That's great.

9 THE COURT: Can we finish in an hour if we go
10 to 1:20 or so?

11 MR. JACKSON: I will agree to "get her done."

12 MR. LALLY: His order of proof is 10 pages on
13 this witness and it's about 15 on the other.

14 THE COURT: Okay.

15 MR. LALLY: Yes. It's about two-thirds.

16 THE COURT: Can we do that or you don't know
17 yet?

18 MR. LALLY: I don't know until he testifies
19 but I presume we can.

20 THE COURT: Because it would be great if we
21 didn't have to bring the jurors back.

22 MR. JACKSON: My goal is to get it done. So I
23 may curtail some of my direct and just get to the
24 point.

25 THE COURT: I'm not suggesting you do that at

1 all.

2 MR. JACKSON: No. It's my decision. I don't
3 feel any pressure by the Court. So thank you for
4 that.

5 THE COURT: Okay. All right. Let's see what
6 we can do.

7 MR. JACKSON: Okay.

8 (Whereupon, the sidebar conference concluded.)

9 THE COURT: Jurors, I'm hoping maybe we go a
10 little past one to keep going with this if that's
11 okay. Everybody's nodding. All right. Thank you.

12 Whereupon,

13 ANDREW RENTSCHLER

14 having been first duly sworn, was examined and
15 testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. JACKSON:

18 Q Doctor, could you please state your first and
19 last name, spelling your last name for the record,
20 please?

21 A Certainly. Andrew Rentschler,
22 R-E-N-T-S-C-H-L-E-R.

23 Q And what do you do for a living, sir?

24 A I'm a biomechanical engineer and accident
25 reconstructionist.

1 Q And who do you work for?

2 A I work for a company called ARCCA, LLC.

3 Q How long have you been in that position as the
4 -- well, working for ARCCA, first of all.

5 A I've been with ARCCA for about sixteen and a
6 half years now.

7 Q And you indicated that you're the Director of
8 Biomechanics and Human Factors; is that right?

9 A I am. I'm a Vice-President and the Director
10 of Biomechanics for the Midwest Division.

11 Q Can you tell us what education, training and
12 background qualifies you to perform your duties as the
13 director for biomechanics and human factors?

14 A Sure. Well, I got my B.S. in Mechanical
15 Engineering with a minor in Biomedical Engineering from
16 Carnegie Mellon University in 1995. I then went on to
17 get my Master's in Bioengineering and Biomechanical
18 Engineering from the University of Pittsburgh in 2002.
19 And then I went to get my doctorate or my Ph.D. in
20 Bioengineering and Biomechanics from the University of
21 Pittsburgh in 2004.

22 Q Doctor, do you specialize in research and
23 analysis to evaluate specifically the study of the
24 relationships between crash injuries and crash forces?

25 A I do, yes.

1 Q And, when I say "crash injuries," we are
2 talking about to human beings?

3 A That's right. Injuries to human beings
4 whether it be, yeah, in a crash, motor vehicle
5 accident, slip and fall, industrial, any type of
6 setting where there is an injury to the human body. I
7 evaluate basically that event and the mechanisms
8 responsible for producing those types of injuries.

9 Q Doctor, does it also include the study of and
10 understanding of human kinematics?

11 A It does, yes.

12 Q As well as human tolerances?

13 A Yes, sir.

14 Q We all know what tolerances mean. What does
15 kinematics mean?

16 A So kinematics is really just the motion of the
17 human body, and it's the study of the human body, how
18 the body moves under different circumstances whether
19 you're in a car that's struck from behind, what
20 direction will your body move; slip and fall, how will
21 your body rotate and move. It's really looking at the
22 motion and the response of the body.

23 Q Are you certified by any professional
24 associations?

25 A I have, again, a Ph.D. There is no

1 professional licensure for biomechanical engineering.
2 It pays to use the highest, basically, certification
3 you can get. I'm also a member of SAE, Society of
4 Automotive Engineers, as well as the American Society
5 for Mechanical Engineers.

6 Q Have you received additional training in
7 education beyond your Ph.D. and the associations that
8 we just talked about?

9 A I have, yes, sir.

10 Q Without going through all the detail, describe
11 the kind of continuing education that you engage in.

12 A I attend seminars and professional classes
13 with respect to biomechanics as well as accident
14 reconstruction, but looking at new technology and
15 research with respect to injuries. For instance, motor
16 vehicle accidents, if there's new safety measures such
17 as airbags, seatbelt pretensioners, auto detection
18 devices on vehicles. So really kind of staying up to
19 date with the current research and literature that's
20 out there.

21 Q So your specialty, your sub-field, if you
22 will, in terms of your engineering degree and education
23 is literally in accident reconstruction and the effect
24 that accidents and incidents can have on the human
25 body; is that right?

1 A It is. Yes. And biomechanics is looking at
2 injury to the human body. So, you know, we use
3 traditional engineering principles and apply it to the
4 body because an injury is just an engineering problem.
5 Instead of looking at a piece of steel that if you know
6 the dimensions and size and you apply a force, it will
7 bend and break. We look at the human body. How much
8 force does it take and how does the force have to be
9 applied to get a humerus fracture or an intervertebral
10 disc injury or any type of injury. There are specific
11 forces and mechanisms you need to produce those
12 injuries, and that's what I do as a biomechanical
13 engineer.

14 Q Is there a difference between a biomechanical
15 engineer and a doctor?

16 A There is, yes.

17 Q In terms of injuries?

18 A Yes.

19 Q Tell us about that.

20 A So we really approach injuries from two
21 different directions. If someone has an injury, you go
22 to the doctor. You go to the hospital. The medical
23 doctor will diagnose that injury, determine the best
24 way to treat it and determine what the prognosis is.

25 As a biomechanical engineer, I look at that

1 injury from a different direction. Here's the injury.
2 Well, how did that injury occur? What type of loading
3 did you need to actually produce that injury? How much
4 force was required? What happened to your body to
5 actually cause that injury to occur?

6 So we approach it, really, kind of from two
7 different areas. And certainly the doctors diagnose
8 the injuries and determine what they are. And then the
9 biomechanical engineer will come in and will look at
10 that injury and not only how is it produced but
11 ultimately our hope is to mitigate and prevent injuries
12 from occurring, whether in motor vehicle accidents,
13 sports settings, industrial settings. Anywhere there
14 is interaction with the body and the environment, we
15 want to try and make it safer for individuals.

16 Q So you're not diagnosing an injury as much as
17 you are trying to figure out the mechanics and the
18 forces behind the injury; is that right?

19 A That's right. I'm not a medical doctor. I
20 wouldn't diagnose an injury. But, given an injury, I
21 understand the mechanics of how that injury is produced
22 and what you need to actually cause that injury to
23 happen.

24 Q Are you also published in the field of
25 biomechanics and/or engineering?

1 A I am. Yes, sir.

2 Q Can you describe that real quick?

3 A When I did my graduate work at the University
4 of Pittsburgh, I worked at a place called the Human
5 Engineering Research Lab, and it was associated with
6 the V.A. in Pittsburgh as well as the University of
7 Pittsburgh. And so we looked at people with
8 disabilities.

9 Well, one of the big things that we did, one
10 of the major points was people in wheelchairs. So if
11 you have to propel a manual wheelchair, you put a lot
12 of stress and force on the arm, the shoulder, the
13 elbow, the hands, carpal tunnel. So we look at the
14 injuries that are produced during those types of
15 events. How can we reduce the force acting on the body
16 for someone like that.

17 So it's looking at, again, how the body
18 responds, how we can set up a chair differently to
19 actually reduce the amount of force one might have
20 experienced doing that type of an activity.

21 Q Have you qualified as an expert in the past in
22 the area of biomechanical engineering and human
23 factors?

24 A I have, yes.

25 Q In furtherance of -- let me ask it this way:

1 Were you asked to engage in an analysis, for ARCCA to
2 be engaged in an analysis of the incident that is
3 currently before the Court?

4 A I was. Yes, sir.

5 Q Did you produce or did your team produce a
6 report about your opinions and conclusions, including
7 the testing and the methodology that went behind those
8 opinions and conclusions?

9 A We did, yes.

10 Q You were not hired by the defense in this
11 case, correct?

12 A No, we were not.

13 Q You were not hired by the Commonwealth in this
14 case?

15 A That's correct. We were not.

16 Q When you started your analysis, you didn't
17 know who we were. You did not know who the
18 Commonwealth was?

19 A That's correct.

20 Q You'd never heard of the Karen Read case?

21 A I had not. No, sir.

22 Q You were contacted by my office after you
23 provided your report, correct?

24 A That is correct, yes.

25 Q Were you ever contacted by the Commonwealth?

1 A Not that I'm aware of, no, sir.

2 Q And you and I have never discussed the
3 substance of your testimony, correct?

4 A That's correct. We have not.

5 Q Would you consider that your analyses, your
6 conclusions and opinions in this case are completely
7 independent of any party in this room?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 BY MR. JACKSON:

11 Q You've not been paid by the defense; is that
12 right?

13 A I have not. No, sir.

14 Q And you do not answer to us in any way?

15 A I do not. That's correct.

16 Q You indicated that you and your team were
17 asked to undertake a review of the circumstances. What
18 exactly did you review in coming to your opinions and
19 conclusions and performing the tests that you've
20 performed?

21 A Well, we looked at -- there were police
22 reports with respect to the incident, medical records
23 for Mr. O'Keefe as well as the autopsy report,
24 photographs of the evidence in this case involving the
25 Lexus, the taillight, the incident scene where the

1 evidence was found, as well as some other
2 documentation.

3 Q And you also worked with Dr. Wolfe, who just
4 left the courtroom, correct?

5 A I did, yes.

6 Q Did you two have sort of a distinct role,
7 although working as a team, a distinct role in making
8 determinations and conclusions about the incident?

9 A We did. There was a distinction. Certainly
10 some of our work overlapped, but there was a
11 distinction with what each of us actually did and
12 performed with respect to this case.

13 Q Following your review and your investigation
14 and analysis, did you make any determination as to
15 whether any of the injuries suffered by Mr. O'Keefe in
16 this case were consistent with producing the damage
17 that was seen on the SUV?

18 A I did. Yes, sir.

19 Q And what did you base your opinion on?

20 A My opinion was based on certainly the medical
21 records; the description of what the injuries were; the
22 damage that we had to the Lexus, primarily the right
23 rear taillight cover; as well as we performed testing
24 to evaluate the strength of that taillight cover and
25 look at the damage associated with different types of

1 impacts and also to look at the overall evidence of
2 where everything was found, where Mr. O'Keefe was
3 found, what the injuries were, how they may or may not
4 have occurred based on the damage we have to the
5 vehicle.

6 Q So did you look specifically to find whether
7 or not you could determine the forces required for
8 Mr. O'Keefe to suffer the injuries that you saw in the
9 records, medical records, et cetera?

10 A I did, yes. I determined in my analysis
11 whether there was sufficient force with that damaged
12 taillight and interaction with that taillight, to
13 produce any of the injuries that were listed or
14 diagnosed in the autopsy report and the medical
15 records.

16 Q Generally speaking, what injuries would you
17 expect to see in a vehicle-pedestrian interaction at,
18 say, 24 miles per hour?

19 MR. LALLY: Objection.

20 THE COURT: I'll allow that. Just generally,
21 Doctor, if you would, please.

22 THE WITNESS: Yes, Your Honor. So 24 miles an
23 hour, once you get up to that speed, you start to
24 see fractures. You see significant ligament and
25 tendon damage. I mean, usually about 15 miles an

1 hour, 15-mile-an-hour impact, is where you start to
2 see damage to, for instance, the leg and the knee.

3 At that speed, you're going to produce -- if
4 you impact the vehicle, you're going to produce upwards
5 of 1,000 pounds of force on the body, depending on what
6 part of your body impacts the vehicle. So certainly at
7 25 miles an hour, you start to see significant
8 injuries.

9 Q Is that true for any part of the body that is
10 struck, whether it's center mass or an extremity, a
11 thousand pounds of force because of the speed of the
12 vehicle?

13 A So force is equal -- Newton's second law.
14 Force is equal to mass times acceleration. So the
15 acceleration is going to be the same. It depends on
16 the mass of whatever body part is being hit.

17 So from the testing that we did at 15 miles an
18 hour, we used a head form, which weighs about 11
19 pounds. And that produced almost 1,000 pounds of
20 force, a little under that for the head. So anything
21 that weighs 11 pounds is going to produce almost a
22 thousand pounds of force. The heavier the object, if
23 you get hit center mass, that's going to be even
24 greater force because that is more mass than just 11
25 pounds.

1 So the acceleration is the same for each body
2 part. It just depends on the weight of the body part
3 and how heavy it is to determine the force that's
4 actually exerted on the body.

5 Q Did you review in furtherance of your
6 conclusions and opinions, did you review records that
7 indicated injuries to both a head as well as an arm, a
8 right extremity, right arm?

9 A I did. Yes, sir.

10 Q Taking those one at a time, is the injury to
11 the head that you saw consistent with having been
12 struck by a vehicle at 24 miles per hour?

13 A It is not. No, sir.

14 Q Can you explain why that is?

15 A There's a couple reasons. First of all, and
16 the main reason is that to get the injury, it was a
17 fracture at the occipital region of the head, which is
18 basically on the back bottom part of the head.

19 So in order to have that part of the head
20 contacted by the taillight, you would somehow have to
21 have a configuration or be standing in a manner that
22 the rest of your body doesn't get hit because there is
23 no other significant injuries to the body. If there is
24 enough force to cause a skull fracture, then there is
25 going to be certainly enough force to cause injury to

1 the rest of the body.

2 So first of all, you have to determine how
3 could you configure somebody could actually be standing
4 to have only the head impacted, the back of the head?
5 And, even if that was the case, if somebody positioned
6 themselves in such a manner to have that occur, you are
7 still going to see other injuries related to that, for
8 instance, with the cervical spine. Over a thousand
9 pounds of force acting on the head, you're going to get
10 significant cervical injuries, fractures, disc
11 injuries, tendon and ligament injuries.

12 So the fact that we only have that head injury
13 and only damage to the occipital portion of the skull
14 is inconsistent in this case with being struck by that
15 taillight.

16 And then there is also the evidence that we
17 saw when we did the testing at 15 miles an hour where
18 we dropped the head form. So that would be akin or
19 like a vehicle backing up at 15 miles an hour, hitting
20 the head. We had more damage to the taillight in that
21 test than what we saw with the subject taillight cover.
22 So if you're going 24 or 25 miles an hour or even
23 faster, you are going to see even greater damage,
24 greater fracturing of that rear taillight, and we just
25 don't have that in this case. So both the physical

1 evidence as well as looking at the biomechanical
2 aspects of it are inconsistent with that head injury
3 occurring due to impact with the rear of the Lexus.

4 Q Shifting to the arm, are the same forces at
5 play if instead of the head making contact with the
6 taillight, it's an outstretched arm, for instance, at
7 the elbow area of a human being, a person 73 inches
8 tall, weighing 215 pounds?

9 MR. LALLY: Objection.

10 THE COURT: The objection is sustained. Ask
11 it differently.

12 MR. JACKSON: Sure.

13 BY MR. JACKSON:

14 Q Shifting to the arm, are the same forces at
15 play if instead of making contact with a head you make
16 contact with an arm, an outstretched arm?

17 A They are. You know, I just explained the
18 force is mass times acceleration. So if the arm weighs
19 the same as the head, you're still going to get that
20 same force, almost a thousand pounds.

21 Q Does the arm weigh the same as the head?

22 A It does, actually, almost identical because
23 your arm, just one of the arms, including the hand,
24 forearm and upper arm is about five percent of your
25 total body weight. So for someone who weighs 216

1 pounds, that comes out to about 10.8 pounds. So your
2 arm, basically your whole arm, is about the same,
3 weighs the same as your head.

4 Q So is your analysis the same, then, if the
5 arm, close to an 11-pound arm, made contact with the
6 taillight traveling at 15 miles an hour, would you
7 expect even more damage to the taillight at a higher
8 speed?

9 MR. LALLY: Objection.

10 THE COURT: I'll allow it. Watch the leading.

11 MR. JACKSON: Sure.

12 THE WITNESS: Yes, you would, if it's higher
13 than 15 miles an hour and you have an arm actually
14 striking that taillight, you are going to get even
15 more significant fracturing, more damage to that
16 taillight at a higher speed than what we saw.

17 BY MR. JACKSON:

18 Q So was the taillight consistent or
19 inconsistent with striking an arm?

20 A Our findings was -- it's inconsistent for a
21 number of reasons, but it is inconsistent with striking
22 the arm. Yes, sir.

23 Q Okay. I want to shift back to the head injury
24 that you saw. Was the head injury that you saw
25 consistent with falling backward from a standing

1 position onto a rigid surface?

2 A That's certainly one of the possible
3 scenarios. That would create the injury mechanism.
4 You fall backwards, strike your head on concrete. That
5 can produce thousands of pounds of force on the head.
6 And so that's certainly a scenario where you could
7 produce that damage if someone was standing and they
8 fell backwards and they struck their head on the
9 roadway or on the curb or a hard surface.

10 Q I was going to ask. I think you may have just
11 answered my question. Those kind of force multipliers
12 require a hard or rigid surface or not?

13 A They do. Yes, sir.

14 Q So grass and dirt would not produce the same
15 sort of force?

16 A Grass and dirt? No. That would certainly not
17 produce the same amount of force as hitting your head
18 on the concrete.

19 Q And if it was grass and dirt with a little bit
20 of snow on the top of it, what effect does that --

21 A That's going to dampen and lessen the force
22 even more so.

23 Q What injuries -- I want to shift back to the
24 arm. I know we are going back and forth, but bear with
25 me. Talking about the arm, if presuming a strike at

1 say 24 miles an hour on just the arm, what kind of
2 damage would you expect to see on the arm irrespective
3 of the vehicle?

4 A You're going to see significant damage on the
5 arm, especially if it hits at that taillight with
6 enough force to actually cause fracture of that
7 taillight. That force is going to be concentrated at
8 an initial point and you're going to see -- at that
9 point, you're going to see probably the most damage to
10 the arm and to the skin there.

11 So remember, at 15 miles an hour, that's about
12 almost 1,000 pounds. So at 24, 25, it's even greater.
13 So that amount of force on the arm, certainly you're
14 going to see extensive subcutaneous lacerations,
15 bruising, contusions. You're going to see most likely
16 fracture of the arm, as well. You're going to see
17 significant damage. Just imagine having your arm out
18 and being struck by a car at 25 miles an hour. There's
19 going to be significant damage, more so compared to
20 simply the abrasions that were diagnosed and documented
21 on the arm in this case.

22 Q You did look at multiple photographs of the
23 arm in this case, of John O'Keefe's arm in this case,
24 correct?

25 A I did. Yes, sir.

1 Q All right. Were the injuries that you saw on
2 John O'Keefe's right arm consistent with having been
3 struck by a vehicle in the manner that you just
4 described?

5 MR. LALLY: Objection.

6 THE COURT: That's sustained, Mr. Jackson.

7 BY MR. JACKSON:

8 Q You reviewed injuries specific to John
9 O'Keefe, correct?

10 A I did. Yes.

11 Q All right. Taking that as a hypothetical,
12 would the injuries that you saw, generally speaking,
13 hypothetically be consistent or inconsistent with
14 having been struck by a car at 24 miles an hour?

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 MR. JACKSON: May we approach?

18 THE COURT: Yes.

19 (Whereupon, there was a sidebar conference as
20 follows:)

21 THE COURT: Go ahead and state the nature of
22 your objection.

23 MR. LALLY: The nature of the objection, I
24 believe, is the precise area in which the Court
25 indicated that after the voir dire it would not be

1 permissible for this witness.

2 THE COURT: So just by throwing a hypothetical
3 in front of it doesn't alleviate you from the
4 specific versus general.

5 MR. JACKSON: Your Honor, he has to be able to
6 say, I looked at John O'Keefe's body. He's not
7 looking at a mannequin's arm. He's looking at
8 John O'Keefe's arm. And his opinion is that the
9 injuries on that arm are inconsistent with the
10 damage to the vehicle and the speeds that were
11 required.

12 THE COURT: And that's what I'm saying he
13 cannot testify to. His expertise is in
14 biomechanics, which qualify him only to describe
15 the forces generated and speaking general about
16 types of injuries those forces would generate. He
17 cannot testify whether a traumatic incident caused
18 John O'Keefe's injuries or whether the trauma did
19 or did not cause the injuries of John O'Keefe.

20 So general causation is fine but not specific
21 regarding this. I'm guided by Massachusetts case
22 law as well as -- there isn't a lot of case law but
23 there is a federal district court case here in
24 Massachusetts. So general causation, forces
25 involved and the effects on a human body, not

1 specifically regarding his injury.

2 MR. JACKSON: Okay.

3 (Whereupon, the sidebar conference concluded.)

4 MR. JACKSON: May I inquire, Your Honor?

5 THE COURT: Yes.

6 MR. JACKSON: Thank you.

7 BY MR. JACKSON:

8 Q If you were to presume for purposes of my
9 question that an arm were struck, an arm was struck, by
10 a vehicle taillight traveling 24 miles an hour or
11 thereabouts, would you expect to see pattern abrasions
12 with no bruising?

13 MR. LALLY: Objection.

14 THE COURT: Well, just what would you expect
15 to see.

16 BY MR. JACKSON:

17 Q What would you expect to see?

18 A So again, I would expect to see significant
19 trauma to the skin, to the bone, to the tendons. I
20 wouldn't expect to see just abrasions, pattern
21 abrasions. I mean, abrasions, by the very definition,
22 means that it's trauma to the skin which is created
23 through rubbing or grinding or friction. So it's
24 basically something rubbing against the skin that
25 basically wears away that top layer of skin. It's not

1 blunt force trauma. If you have blunt force trauma,
2 that produces a contusion or a bruising. It's not a
3 laceration-type injury, a cutting injury that actually
4 produces a cut or a significant laceration. It's
5 really just rubbing along the skin. So that would be
6 inconsistent.

7 If you have an arm that's actually struck at
8 25 miles an hour, you're going to have significantly
9 greater damage, especially if there's a taillight that
10 shatters. So you have the taillight coming in. It's
11 hitting the arm and it's moving forward into the arm.
12 So if that actually caused fracture of the taillight,
13 then parts of that taillight are going to be pushed
14 into the arm and likely imbedded into the arm as the
15 vehicle continues forward and pushes the arm out of the
16 way.

17 We don't -- I didn't see any of that,
18 basically just superficial abrasions which all appeared
19 to have a similar amount of force. There is not a
20 difference -- that's the other thing. If you had a
21 taillight shatter and explode on an arm, you would have
22 some areas where you would have very deep contusions or
23 lacerations, other lighter areas. But, when you look
24 at the abrasions that were noted in this case, they all
25 appear to be the same force, generally the same

1 direction and of the same severity, which would be
2 inconsistent, in my opinion, with being struck at 25
3 miles an hour.

4 Q Generally speaking, do you look for
5 consistency and size of an object striking a body and
6 the injury that the body suffers from being struck by
7 the object?

8 A Absolutely. I mean, size is a big part of it,
9 certainly. Yes.

10 Q So did you do any measurements of the size of
11 the taillight, the width of the taillight, that was
12 shattered?

13 A Yes.

14 Q And what was that width if you can recall?

15 A I think the width we looked at was maybe six
16 inches or so.

17 Q In review of your -- in coming to your
18 opinions and conclusions, did you look at the arm of
19 John O'Keefe just sort of laid out, straight out?

20 A I did, yes.

21 Q Did you see where the injuries started and
22 stopped or began and ended, however you want to put it,
23 in terms of size?

24 A Yes. It started from the upper arm and then
25 extended down into the forearm, which was greater than

1 12 inches of length where you see those injuries and
2 those abrasions occur.

3 Q Did you come to any conclusions or opinions
4 concerning the size differential between the taillight
5 and the injuries that you see?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q Generally speaking, would you expect, if there
10 was an injuring event that the size of the injury would
11 be consistent with the thing that produced the injury?

12 A Yes. Generally speaking, you would certainly
13 expect that. And, again, you would normally and
14 usually be able to see an initial point of contact
15 because that's where the most force is going to occur
16 where it causes that taillight to break. So you would
17 have an area of severe damage, and then it would extend
18 out likely to the edges of where it would contact the
19 rest of the taillight.

20 Q From a biomechanics and/or a physics
21 standpoint or an engineering standpoint, is it
22 reasonable if someone is standing with their arm
23 extended to be hit by a moving vehicle at, say, 25
24 miles an hour and the body, the center mass of the body
25 to be projected?

1 MR. LALLY: Objection.

2 THE COURT: Ask it differently.

3 BY MR. JACKSON:

4 Q Is it consistent in your view with engineering
5 principles that you know if an arm is hit, extended,
6 not the body, just the arm is struck, for the body then
7 to be projected?

8 MR. LALLY: Objection.

9 THE COURT: I'll allow that.

10 THE WITNESS: It's not, no. So if we have
11 contact, the arm's down, we have contact to the
12 arm. I mean, first of all, it's a ball and socket
13 joint. So the arm can move independently of the
14 rest of the body. So if enough force, even if
15 you're contracting your arm and trying to hold it
16 out as tight as possible, it's going to overcome
17 that, that muscular contraction and basically just
18 move the arm.

19 But, secondly, it all depends on your center
20 of mass. The center of mass is kind of the
21 equilibrium point of your body and where your
22 weight is distributed. And, for most normal
23 people, the center of mass occurs at your umbilicus
24 or your belly button. So wherever your belly
25 button goes, that's where your body is going to

1 move. They teach this to football players. If
2 you're a defensive back and that running back comes
3 around the corner and it's you against him, they
4 tell them or they teach them to watch the waist and
5 watch the belly button. It doesn't matter what
6 your head and your arms do or what their feet do.
7 Wherever their belly button goes, that's where
8 they're going to go. So that's what you want to
9 tackle.

10 So even if you had your arms straight out,
11 again, we said it would move because of the joint.
12 But let's assume you had a metal pole sticking out
13 of your arm -- out of your body instead of your arm
14 and that metal pole gets hit. What's going to
15 happen to your body? It's just going to spin
16 around, right, because it's producing a movement
17 arm, which produces a torque on the body. So your
18 body is going to basically spin.

19 In order to get the body, the complete body,
20 over, for instance, 10, 20, 30 feet into the yard,
21 you need a force acting at the center of mass. You
22 need an external force pushing the body that way.
23 And that's not going to happen if you just hit the
24 arm. It's not enough force. It's not the right
25 mechanism to actually cause the body to somehow

1 move that far over.

2 BY MR. JACKSON:

3 Q Assuming that a body was struck with enough
4 force at center mass to project that body 20, 30 feet,
5 what injuries would you expect to be produced on that
6 body?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q If you did have a body that was projected a
11 distance, what injuries -- from a car, what injuries
12 would you expect to see on the body?

13 MR. LALLY: Objection.

14 THE COURT: I'll see you at sidebar.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 THE COURT: What is the objection?

18 MR. LALLY: Same objection with an addition
19 that this calls for absolute speculation,
20 particularly when there is no --

21 THE COURT: I'm only concerned with there is
22 evidence that there was some projection, right?

23 MR. LALLY: Uh-huh.

24 THE COURT: Okay. I've allow the question
25 without any distance because that's in dispute,

1 right?

2 MR. JACKSON: It's not actually -- I mean,
3 I'll follow the Court's instructions.

4 THE COURT: I'm not sure it's even -- just do
5 this, just without that.

6 MR. JACKSON: Okay.

7 (Whereupon, the sidebar conference concluded.)

8 MR. JACKSON: May I, Your Honor?

9 THE COURT: Yes.

10 BY MR. JACKSON:

11 Q Doctor, do you have my question in mind? Do
12 you need me to repeat it?

13 A Maybe repeat it.

14 Q Easy for you to say.

15 Assuming that a body was struck center mass
16 with enough force from a vehicle traveling at whatever
17 speed to project the body off the ground, would you
18 expect to find injuries on that body?

19 A You would. And you would actually see that
20 there are specific injuries because let's say you're
21 standing forward and you get hit on the right side with
22 a vehicle. You're going to get injuries and damage to
23 the right side of the vehicle as that vehicle impacts
24 you. It depends on the profile of the vehicle how high
25 the hood comes up, whether you're going to wrap up onto

1 the hood or if it's a van or the back of an SUV, it
2 will project or push your entire body to the left. So
3 you're going to get initial contact and injuries to the
4 right side of your body. And then if it propels you
5 into the air, you're going to get airborne, and then
6 you're going to contact the ground usually with the
7 left side of your body. So then we're going to see a
8 correlation of injuries to the left side of your body
9 as it slams down onto the ground, as well. And, at
10 those speeds, normally, you would also see more
11 abrasions, greater abrasions or road rash along the
12 entire part of the body as the body then would slide
13 until it came to the point of rest.

14 Q And you did not see that in this case?

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 MR. JACKSON: May I have a moment, Your Honor?

18 THE COURT: Yes.

19 MR. JACKSON: Thank you, Your Honor. I have
20 nothing further.

21 THE COURT: Okay. Mr. Lally?

22 CROSS-EXAMINATION

23 BY MR. LALLY:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q Now, you, in conjunction with the other
2 doctors on your team that conducted the analysis and
3 testing in this case, you wrote a report; is that
4 right?

5 A We did. Yes, sir.

6 Q And that report was issued on February 12th,
7 2024; is that correct?

8 A I believe that's correct. Yes.

9 Q And, within the first paragraph of that
10 report, the last two sentences state (as read), "This
11 analysis is based on information currently available
12 for ARCCA and is only to be limited -- excuse me --
13 only to be issued in its entirety. However, ARCCA
14 reserves the right to supplement or revise this report
15 if additional information becomes available"; is that
16 correct?

17 A I believe that's correct. Yes, sir.

18 Q Now, the information that you received and
19 that you reviewed either individually or as a team,
20 that included some state police reports; is that
21 correct?

22 A Yes, sir.

23 Q Some Canton Police Department reports;
24 correct?

25 A Yes.

1 Q Some scene photos; is that correct?

2 A That's correct, yes.

3 Q Medical examiner dispatch removal report; is
4 that right?

5 A I believe so. Yes, sir.

6 Q Some videos from the location of 34 Fairview
7 Road; is that right?

8 A Yes, sir.

9 Q Some photographs of the defendant's vehicle,
10 the 2021 Lexus LX 570; is that correct?

11 A Yes, sir.

12 Q Photographs of evidence that was recovered
13 from the scene; is that correct?

14 A That's correct. Yes.

15 Q C.D.R. report from the defendant's Lexus?

16 A Yes, sir.

17 Q And then essentially there were some other
18 materials, whether they be literature or other things,
19 that you and your team of other doctors reviewed over
20 the course of formulating your opinions in this case,
21 correct?

22 A That's correct, yes.

23 Q Okay. Now, in regard to evidentiary materials
24 that indicate -- within the report that were reviewed,
25 you talk about the lens cap to the taillight assembly,

1 the taillight assembly photographs of that nature. And
2 then there is mention of a black straw that was found
3 on scene, correct?

4 A Yes.

5 Q There is no mention in the report of either
6 Mr. O'Keefe's shoe or his hat, correct?

7 MR. JACKSON: Objection. May we approach?

8 THE COURT: Yes.

9 (Whereupon, there was a sidebar conference as
10 follows:)

11 THE COURT: What is the nature of your
12 objection.

13 MR. JACKSON: Relevance. If the defense was
14 not allowed to ask any questions concerning the
15 specific facts of this case, which I was clearly
16 not allowed to do, then Mr. Lally -- what's good
17 for the goose is good for the gander. Mr. Lally
18 should not be able to bring in specific facts about
19 this case. Otherwise, he opens the door.

20 THE COURT: So you did get into some of it
21 prior to it being objected to. Once it was
22 objected to, I made my ruling.

23 Are you going to just repeat the cross you did
24 of the law witness? I'd ask you to focus on what's
25 relevant to this particular witness.

1 MR. LALLY: I am going to, but --

2 THE COURT: All right. So --

3 MR. LALLY: -- I think it is relevant as far
4 as the materials that he did not review.

5 MR. JACKSON: Then it's also relevant to what
6 he did review, which means he reviewed the autopsy
7 photos, the actual injuries on the arm, the actual
8 Lexus, which I was disallowed from asking about. I
9 stayed with -- the Court focused me and put up
10 guardrails. And I had to stay with general
11 propositions concerning a body in motion.

12 THE COURT: Well, that's the law.

13 MR. JACKSON: I understand, but it's the law
14 for them too.

15 THE COURT: Mr. Lally, how does this go to the
16 general opinion that he gave? I understand it goes
17 to maybe credibility. What are you going to do
18 with this? What do you intend to do with this?
19 It's already in evidence. You can argue it. What
20 do you need from this witness?

21 MR. LALLY: Specifically, what I would ask is
22 whether or not had he known or been provided any
23 of -- I mean, there were statements contained
24 within his report that if he had DNA, that --

25 THE COURT: That's fine. But no hat, no shoe.

1 Just the statements that I allowed in because it
2 goes to his credibility. He can't hear about her
3 hitting him. I mean, very limited I'll let in when
4 it does not open the door.

5 MR. JACKSON: You are going to allow in that
6 -- the Commonwealth's leading question about were
7 you aware that she said, I hit him, I hit him, I
8 hit him?

9 THE COURT: Yes.

10 MR. JACKSON: Okay. That is in dispute. That
11 is clearly in dispute. I don't believe the
12 evidence is before this jury that she said, I hit
13 him, I hit him, I hit him.

14 THE COURT: From three witnesses or two
15 witnesses.

16 MR. JACKSON: I don't want to sit here and
17 relitigate it, but you -- I spent five days cross-
18 examining those witnesses, and they all broke down,
19 all of them. One of them couldn't remember what he
20 was wearing. The other one said --

21 THE COURT: No. We are not going to discuss
22 it. The jurors are free to choose --

23 MR. JACKSON: That's why it's not fair for him
24 to basically give his closing argument.

25 THE COURT: No. I wanted to get this to the

1 jury. How long are you -- I mean finish with this
2 witness. How long do you think you're going to be?

3 MR. LALLY: Not very long.

4 THE COURT: All right. You can put in what he
5 didn't review before writing an opinion on this
6 case, but it's already in evidence. And he may
7 open the door. I'm not suggesting that he has.

8 MR. LALLY: Your Honor, from my understanding
9 of the Court's ruling, the guardrails that counsel
10 is referencing were put up in reference to
11 hypotheticals. I'm not asking him any
12 hypotheticals.

13 THE COURT: No. They were just not specific
14 to John O'Keefe's injuries. So where are you
15 going? What specifically are you going to ask him
16 that's different than the last witness?

17 MR. LALLY: I don't know offhand. It's
18 probably going to be very similar to what I asked
19 the last --

20 THE COURT: All right. I'm keeping it out.
21 I'm not going to allow you to get into what you
22 just did through the last witness. They both wrote
23 a report. This is what they conducted, or you do
24 risk opening the door.

25 MR. LALLY: Okay.

1 (Whereupon, the sidebar conference concluded.)

2 THE COURT: Do you need a couple of minutes,
3 Mr. Lally?

4 MR. LALLY: No. That's fine, Your Honor.
5 Thank you, though.

6 BY MR. LALLY:

7 Q Doctor, are you familiar with a term called
8 compression abrasions?

9 A Compression abrasions?

10 Q Yes.

11 A Yes.

12 Q And am I correct when I say compression
13 abrasions are essentially when direct pressure from a
14 blunt object together with slight rubbing movements
15 produce skin and epidermal crushing? Is that what your
16 understanding of the term is?

17 A Yes, sir.

18 Q And are you familiar with pattern abrasions?

19 A I am, yes.

20 Q And pattern abrasions are injuries that show a
21 distinct pattern that may reflect the shape of the
22 impacting blunt object that you may see with reference
23 to injuries that are left by that blunt object; is that
24 correct?

25 A That's correct. Yes.

1 Q Now, as far as in general terms from what you
2 reviewed, at any point in time did you look at a state
3 police reconstruction report?

4 A I don't believe that I did. No, sir.

5 Q You weren't provided with that; is that
6 correct?

7 A That's correct. I don't believe so.

8 Q You weren't provided with any sort of forensic
9 reports, DNA or anything like that; is that correct?

10 A I don't believe so. No, sir.

11 Q Now, you never actually looked at the physical
12 car; is that correct?

13 A I did not. That's correct.

14 Q And are you aware that the physical car being
15 the defendant's car is still in law enforcement custody
16 and available for inspection if you wanted to? Are you
17 aware of that?

18 A I think I'm aware of that. Yes, sir.

19 Q But you never made that request; is that
20 correct?

21 A That was not necessary in this case to inspect
22 the vehicle.

23 Q Whether it's necessary or not, you didn't make
24 that request, correct?

25 A I don't remember if we made that request or

1 not. We obviously didn't look at the vehicle, but it
2 wasn't necessary in this case.

3 Q Did you ever look at the actual taillight
4 pieces or the taillight housing; is that correct?

5 A Not the actual. We looked at photographs of
6 the evidence, yes.

7 Q Now, the injuries that you observed or
8 reviewed materials in regard to Mr. O'Keefe were
9 primarily on the right side of his body; is that
10 correct?

11 A Well, sir, on the right arm, the posterior
12 aspect of the right arm. Yes. And then the skull
13 fracture was a little bit to the right, occipital
14 fracture.

15 Q And there was also bruising on his right hand;
16 is that correct?

17 A There was bruising on the back of his right
18 hand.

19 Q On the dorsal aspect?

20 A Yes. Correct.

21 Q And there was also bruising on sort of the
22 posterior of his right knee; is that correct?

23 A There was a small bruise, I believe, yes.

24 Q Now, with respect to within your report, you
25 talk about the numerous linear abrasions on the

1 posterior of Mr. O'Keefe's right arm and forearm,
2 correct?

3 A Yes, sir.

4 Q And, in relation to those injuries, there is a
5 sentence in which you or whoever authored this part of
6 the report, I'm assuming it's you, indicate that
7 furthermore, any such injuries would be highly
8 improbable if Mr. O'Keefe was wearing a jacket,
9 correct?

10 A Yes.

11 Q Are you aware that Mr. O'Keefe was not wearing
12 a jacket other than a long-sleeve sort of hooded shirt?

13 A I believe that came to light afterwards.
14 Again, I mean, it doesn't affect my actual opinions in
15 this case, but it was a sentence added in there. Yes,
16 sir.

17 Q And so also within your report, same
18 paragraph, you indicate (as read), "Blood and DNA
19 transfer would also be highly probable under such
20 circumstances, none of which were reportedly found on
21 the tail lamp assembly or any of the fractured pieces,"
22 correct?

23 A Correct.

24 Q Are you aware that DNA consistent with that of
25 Mr. O'Keefe was actually found on the taillight housing

1 from the defendant's vehicle?

2 A I am aware after we wrote or issued the report
3 that it became known to us that, I believe, DNA was
4 tested and some DNA was found, I believe a small
5 amount. I don't believe any blood evidence was located
6 or found on any pieces, but there was indication of DNA
7 on the taillight housing.

8 Q There was also DNA matching Mr. O'Keefe that
9 was found on the exterior or the piece of drinking
10 glass that was found right near his body?

11 A I believe so, yes.

12 Q And there was also pieces, approximately a
13 sixteenth of an inch by sixteenth of an inch of clear
14 and red plastic that was subsequently found to be
15 consistent with the defendant's taillight that was
16 found imbedded within Mr. O'Keefe's shirt?

17 A Within the shirt, I believe, yes, not his
18 actual body.

19 Q And so these are all things that you found out
20 after you issued your report in February of 2024,
21 correct?

22 A That's correct, sir. Yes.

23 Q When you were talking about the injuries to
24 the back of the head of Mr. O'Keefe, consistent with
25 coming into contact with a hard surface, correct?

1 A Yes, sir.

2 Q Would that hard surface include if the ground
3 was frozen?

4 A Well, you'd have to perform an analysis,
5 actually, because you'd have to determine how hard that
6 ground was. You'd have to look at the freeze-and-thaw
7 cycle probably leading up to weeks of that. You can't
8 just look at ground and say, well, it's below freezing.
9 So that ground must be frozen. I mean, is it a
10 possibility? It may be. But you have to go through an
11 actual analysis and procedure to determine how hard
12 that ground is and whether it would produce those
13 injuries.

14 Q So it is something that's capable of being
15 done by you; is that correct?

16 A Performing that type of an analysis?

17 Q Yes.

18 A I mean, you could go through and do it, sure.
19 Yes.

20 Q Okay. But you didn't do it, correct?

21 A No. I did not do it, no, because -- yeah.
22 There is no need in this case. We don't know what
23 happened in this case. There is no indication of --
24 certainly, it's not consistent with getting hit by the
25 car and ending up where he did. Even if the ground is

1 somehow hard enough to cause that type of an injury,
2 again, there is no movement and no force to get his
3 body over there and the damage with the car is
4 inconsistent with him being struck by it.

5 So whether the ground could cause it or not,
6 the roadway could cause it. The curb could cause it.
7 A bat could cause it. There's numerous different
8 possibilities and we don't really have enough evidence
9 in this case to determine what one specific event
10 actually caused that injury.

11 Q You didn't have enough evidence based on what
12 were provided; isn't that fair to say?

13 A I didn't have enough evidence based on what I
14 was provided. And, even looking at the additional
15 evidence that I became aware of after the fact, there's
16 still no evidence. I mean, you can't deny the science
17 and the physics as to what would have happened if he
18 was struck by the vehicle. So anything past that you
19 have to somehow overcome that hurdle, which is very
20 difficult to do.

21 Q And when was it that you looked at this
22 additional material and who provided it to you?

23 A We were informed after the report was issued
24 that DNA was found. And that was really the primary
25 issue, I believe, that some DNA was found on the

1 housing which, again, there's numerous explanations or
2 ways that DNA can get on the light housing.

3 Q Well, let me ask you this, sir: With regard
4 to the materials that you were provided with, was there
5 anything in there that stated that Mr. O'Keefe's skull
6 fracture on the back of his head was caused by contact
7 with the taillight?

8 A No. I don't believe there was anything in
9 those materials that stated that.

10 Q Was there anything in those materials that
11 indicated or that anyone stated at any point in time
12 that Mr. O'Keefe's arm was outstretched at the time
13 that he was struck by the vehicle?

14 A No, sir. There wasn't.

15 Q Was there anything in there indicating that
16 his arm was tucked in at the time that he was struck by
17 the vehicle?

18 A You know, there is no indication in any of
19 that evidence of what he may or may not have been
20 doing, how he may or may not have been positioned. I
21 mean, that's the whole issue. There is no evidence to
22 indicate what may have allegedly occurred in this case.

23 Q Now, a typical pedestrian collision that you
24 see through the course of your work involves a
25 pedestrian being struck by the front of a vehicle; is

1 that fair to say?

2 A No. I see all types of different -- people
3 getting run over backwards, cars spinning, hitting
4 sideways. Frontal impacts certainly occur, yes. But
5 we see pedestrians getting struck by all parts of the
6 vehicle.

7 Q I'm sure you see all kinds. What I'm asking
8 is predominantly when you see a pedestrian collision,
9 the typical pedestrian collision would be a pedestrian
10 crossing a road in front of a vehicle as it's
11 approaching; isn't that correct?

12 A That's certainly not uncommon. Yes, sir.

13 Q Okay. Now, as far as -- I believe you
14 described a little bit on your direct testimony as far
15 as there's differences in the type of injuries that you
16 would expect or anticipate, depending on how the
17 vehicle interacted with a pedestrian in a pedestrian
18 collision, correct?

19 A Yes, sir.

20 Q Okay. And, as far as -- are you familiar with
21 what's called a sideswipe collision?

22 A Yes, sir. I am.

23 Q And am I correct when I say that in a typical
24 pedestrian collision with a pedestrian crossing in
25 front of a vehicle, there are a number of different

1 types of interactions as far as a wrap in a forward
2 projection versus a fender -- versus a number of
3 different ways that a pedestrian can interact with the
4 front of a vehicle, correct?

5 A It depends on the position of the pedestrian
6 and certainly the profile of that vehicle and the speed
7 of the vehicle. Yes, sir. There's many different
8 factors involved in it.

9 Q And so in a typical pedestrian collision when
10 a pedestrian is struck by the front of the vehicle,
11 that involves more of an assumption of the velocity of
12 the striking motor vehicle by the pedestrian than you
13 would expect to see in a sideswipe collision, correct?

14 A Well, I mean, yes. Generally speaking, a
15 sideswipe means that the person or pedestrian and the
16 vehicle don't obtain a similar or common velocity. So
17 if you're standing in front of a car and it hits you,
18 it is going to speed you up to that same speed and then
19 disengage.

20 Sideswipe means that there is not this mass-
21 to-mass impact. By its very nature, sideswipe has
22 minimal forces. We see it even between vehicles that
23 just rub against each other. So if there is a
24 sideswipe impact with a pedestrian and a vehicle, there
25 is going to be very little damage to the pedestrian

1 and, similarly, there is going to be very little
2 movement. There is really no force at all acting --
3 for instance, if a car came and it swiped your arm,
4 swiped by your arm, but didn't have enough force or
5 enough contact to cause any damage, well, it wouldn't
6 cause any movement of the person either. So a
7 sideswipe, by its very nature, involves minimal impact,
8 minimal forces, minimal velocities.

9 Q And also contained within the report that you
10 at least co-authored, there is an indication that
11 Mr. O'Keefe's injuries, at least to his skull, the
12 fracture to his skull, are consistent with him having
13 been pushed or possibly been impacted by the subject
14 Lexus and falling backward, striking his head; isn't
15 that correct?

16 A Yeah. So that's another possibility. If --

17 Q I'm sorry, sir. "Yes" or "no." Is that in
18 your report?

19 THE COURT: Let him answer. Let him answer.

20 THE WITNESS: So if we're saying that there's
21 enough force if you fall backwards to strike your
22 head and cause that skull fracture, well, he could
23 have slipped and struck his head. The car could
24 have backed up and not known that he was there and
25 nudged him and caused him to fall. I mean, any

1 event that would cause him to fall backwards,
2 obviously, would result in his striking his head.
3 So there's numerous, almost infinite possibility of
4 different scenarios that could result in that type
5 of an event.

6 MR. LALLY: Thank you.

7 THE COURT: Mr. Jackson?

8 MR. JACKSON: Nothing further.

9 THE COURT: Okay. Dr. Rentschler, you are all
10 set, sir.

11 THE WITNESS: Thank you, Your Honor.

12 (Whereupon, the witness is excused.)

13 THE COURT: Jurors, I'm going to see counsel
14 for the last time at sidebar.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 THE COURT: Okay. So are you going to rest?

18 MR. JACKSON: I am going to rest, and I also,
19 since we are at sidebar, I would ask to renew the
20 motion for required finding, Your Honor.

21 THE COURT: Okay.

22 MR. JACKSON: But I would like to rest in
23 front of the jury.

24 THE COURT: Yes. I'll let you do that.

25 Are you -- do you have anything for rebuttal?

1 MR. LALLY: No, Your Honor.

2 THE COURT: All right. So I will tell them
3 that they will get the case tomorrow for closing
4 arguments and charge. We need to have a charge
5 conference. Do you need to argue your motion or do
6 you want to just rest on required finding?

7 MR. JACKSON: Based on what I stated
8 previously.

9 THE COURT: Okay. So you can rest here and
10 I'll let you formally rest in front of the jury.
11 Why don't you do that right now.

12 MR. JACKSON: With that, Your Honor, the
13 defense rests.

14 THE COURT: Okay. And there is now rebuttal.
15 Are you now moving for the required finding of not
16 guilty?

17 MR. JACKSON: I do, Your Honor.

18 THE COURT: Okay. And you waive argument?

19 MR. JACKSON: I do, Your Honor.

20 THE COURT: All right. That motion is denied.
21 So I will tell the jurors they are going to get the
22 case tomorrow. At 2:00 o'clock, I have something
23 that will take five or 10 minutes. Why don't you
24 all come back here at 2:30 for the charge
25 conference.

1 MR. JACKSON: That's fine, Judge.

2 THE COURT: Okay. So we'll see everybody at
3 2:30, but you can go ahead and do that.

4 MR. JACKSON: Thank you.

5 (Whereupon, the sidebar conference concluded.)

6 MR. JACKSON: Thank you, Your Honor. With
7 that, the defense rests.

8 THE COURT: Jurors, that is the evidence in
9 this case. After all these weeks, that is the
10 evidence that you will hear in this case. The
11 lawyers and I still have work to do for tomorrow
12 but tomorrow morning, we will have closing
13 arguments of counsel. They will get an hour apiece
14 to be able to argue this case to you. I'll
15 instruct you on the law and then 12 of you will
16 begin your deliberations sometime tomorrow. Okay?

17 So with that, please do not discuss this case
18 with anyone. Don't do any independent research or
19 investigation into this case. If you happen to
20 see, hear or read anything about this case, please
21 disregard it. Let us know. We'll see you
22 tomorrow.

23 (Whereupon, the jurors are escorted from the
24 courtroom and excused for the day.)

25 (Whereupon, a luncheon recess was taken.)

A F T E R N O O N S E S S I O N

(Court resumes.)

(Defendant present. Jury not present.)

So before we start, there is something I do want to talk to counsel about at sidebar.

(Whereupon, there was a sidebar conference as follows:)

THE COURT: So I would like to have a colloquy with Ms. Read about her not testifying.

MR. YANNETTI: That's fine.

THE COURT: So we'll do it here at sidebar and I will seal it.

MR. YANNETTI: Perfect.

THE COURT: And, also, you have requested a defendant-did-not-testify instruction.

MR. YANNETTI: Yes.

THE COURT: I just want her to say she agrees with that, as well. Can you bring her up?

MR. YANNETTI: Yes.

MR. JACKSON: I'll get her.

(Whereupon, the defendant comes to the sidebar and is duly sworn by the clerk.)

THE COURT: All right. So, Ms. Read, I need to have a colloquy with you about your decision not to testify. So would you tell me your full name?

1 THE DEFENDANT: Karen Read.

2 THE COURT: How old are you?

3 THE DEFENDANT: Forty-four.

4 THE COURT: How far have you gone in school?

5 THE DEFENDANT: I have a master's.

6 THE COURT: In the last 24 hours, have you had
7 any drugs or alcohol that might affect your
8 judgment in here today?

9 THE DEFENDANT: No.

10 THE COURT: Are you aware of any mental
11 illness that you might have or that you suffered
12 from in the past?

13 THE DEFENDANT: No.

14 THE COURT: So you understand that you have a
15 right, an absolute right, to testify on your own
16 behalf in this case, and I would open the case
17 again to give you the opportunity to do so. Do you
18 understand that?

19 THE DEFENDANT: I understand.

20 THE COURT: And it is important that you talk
21 to your lawyers about whether or not you testify,
22 but the decision as to whether you testify is not
23 up to your lawyers. Do you understand that?

24 THE DEFENDANT: I do.

25 THE COURT: And the decision about whether you

1 testify or not is yours and yours, alone. Do you
2 understand that?

3 THE DEFENDANT: I understand that.

4 THE COURT: What is your decision? Are you
5 going to testify on your own behalf

6 THE DEFENDANT: My decision is not to testify
7 on my own behalf. That is my decision.

8 THE COURT: And not your lawyers' decision?

9 THE DEFENDANT: It is not my lawyers'
10 decision.

11 THE COURT: Do you understand that you can't
12 come back at a later time and say, I really wish I
13 testified and my lawyers never told me it was my
14 decision? Do you realize you can't do that?

15 THE DEFENDANT: I understand I cannot come
16 back at a later time and change my mind.

17 THE COURT: All right. Like I say, are you
18 doing this willingly, freely and voluntarily?

19 THE DEFENDANT: Yes. I'm doing this
20 willingly, freely and voluntarily.

21 THE COURT: Has anybody forced you or
22 threatened you or promised you anything in exchange
23 for your decision?

24 THE DEFENDANT: No.

25 THE COURT: Are you doing this because it's

1 your decision and your decision, alone?

2 THE DEFENDANT: Yes.

3 THE COURT: You understand that your lawyers
4 have requested I give an instruction to the jury
5 about you not testifying?

6 THE DEFENDANT: Yes.

7 THE COURT: Have they shown you that
8 instruction that they requested?

9 THE DEFENDANT: Yes.

10 THE COURT: What is your decision? Do you
11 want me to give that instruction to the jury or do
12 you want me to not --

13 MS. LITTLE: Well, Your Honor, you did ask
14 every juror that at jury selection.

15 THE COURT: Hold on. Just so that the record
16 is clear, both Ms. Little and Mr. Yannetti nodded
17 when Ms. Read just looked at them, which is
18 perfectly understandable. Mr. Jackson did not.

19 MR. JACKSON: I looked passively.

20 THE COURT: But the decision is yours. So
21 what is your decision about that instruction?

22 THE DEFENDANT: Yes. It is my decision. It
23 is not theirs. I will not come back at a later
24 time. This is voluntary, voluntarily mine.

25 THE COURT: Okay. Mr. Lally, hold on, or

1 Ms. McLaughlin. Is there anything further?

2 MR. LALLY: No, Your Honor.

3 THE COURT: All right. You're all set.

4 (Whereupon, the sidebar conference concluded.)

5 THE COURT: All right. So the charge
6 conference. The first question I have is regarding
7 the -- I'll go through them in order, in the order
8 that I have them in my very rough draft, but there
9 is no request of the lesser-included offense of
10 voluntary manslaughter to the second degree murder
11 charge. Is that what the Commonwealth's intention
12 is, not to request an instruction of voluntary
13 manslaughter as a lesser included of the second
14 degree murder?

15 MR. LALLY: I'm sorry? That's correct, Your
16 Honor.

17 THE COURT: Okay. And neither side has
18 requested an instruction of a lesser included of
19 OUI?

20 MR. LALLY: That's correct, as well.

21 THE COURT: And the defense is not requesting
22 that?

23 MR. YANNETTI: That's correct, Your Honor.

24 THE COURT: All right. So the first
25 instruction, the request from the defense is that I

1 split the charge, and it's written that way. I'm
2 not going to split the charge. So the way it will
3 be is the defense will argue first and then the
4 Commonwealth. Then we just go through all the
5 instructions.

6 So aside from that, the first instruction is
7 the presumption of innocence. I have one that I
8 typically give, but I will give the one that is
9 requested by the defense.

10 The next instruction is our reasonable doubt
11 instruction, then function of the jury, the
12 arguments of the lawyers and the judge's comments,
13 function of the judge, functions of the lawyers.
14 The verdict must be based on the evidence.

15 I've incorporated some of what you've both
16 included into that. I have language here that
17 similarly, as you review the exhibits, you may find
18 that some information has been removed because it
19 is not relevant. Please ignore that and don't try
20 and guess what may have been removed or why. I
21 think that came from the defendant's request.

22 Any information that you may have read, heard
23 or seen about the case outside of the courtroom is
24 not evidence. My instructions to you and any
25 comments that I made, the lawyers' opening and

1 closing statements and any comments they may have
2 made are not evidence. Answers that I struck from
3 the record and told you to disregard are not
4 evidence. Only the testimony of the witnesses,
5 that is, their answers to the questions, and the
6 exhibits are evidence, with a more robust
7 instruction but that's what I've added.

8 And I do have a line about sympathy. Then I
9 do the view. I should say right off the bat I am
10 not going to give a *Bowden* instruction. You can
11 argue it. You've been able to put in a tremendous
12 amount of evidence. I've given you a lot of leeway
13 with that, but there is something in this case that
14 -- and I am fully within the law to do that.

15 So I have here some language which I think is
16 appropriate based on issues that were raised about
17 the credibility of witnesses. Did the witness have
18 any bias, reason or motive to give false or shaded
19 testimony? If so, you may consider that bias or
20 motive in your deliberations and ultimately as to
21 whether or not it impacts the credibility of the
22 evidence presented. So I cover the bias part of
23 that.

24 We'll go through it, and you can tell me --
25 who is going to argue this for the defense?

1 MR. YANNETTI: I am, Your Honor.

2 THE COURT: All right. So we'll go through
3 it. We will do each one.

4 The limiting instructions: I give the
5 defendant's bad acts instruction. I'll give a
6 similar instruction on the digital evidence that I
7 gave during the trial, photographs and testimony
8 with an emotional impact, humane practice. And, as
9 of today, hypothetical. I had hoped that both of
10 you could suggest something. I said that this
11 morning.

12 Do either side have anything for me on
13 hypothetical?

14 MR. YANNETTI: I'm sorry. I don't, Your
15 Honor. We are going to be getting back at a fairly
16 early hour. I'm happy to work on it --

17 THE COURT: That's fine. I can do it but, I
18 mean, I wanted to give you both the opportunity --
19 yes. Go ahead and do one and send it to me.

20 MR. YANNETTI: I'm happy to do that.

21 MS. MC LAUGHLIN: I'll have one, too, by the
22 end of the day.

23 THE COURT: Okay. Opinion testimony,
24 evaluation of exhibits, direct and indirect and
25 circumstantial evidence.

1 So I received today defendant's request, a
2 late request, for the law allows both direct and
3 indirect evidence and there is no distinction to be
4 given. A conviction, however, may not be based
5 upon the piling of inference upon inference or on
6 conjecture and speculation. I don't think that's
7 exactly the language from the case law here that
8 you've cited.

9 MR. YANNETTI: I actually quoted it, Your
10 Honor.

11 THE COURT: From which one? From *Honsch* or --

12 MR. YANNETTI: From *Honsch*. *Honsch* quotes
13 *MacCormack*, and *MacCormack* takes the law from
14 *Dostie*.

15 THE COURT: Yes.

16 MR. YANNETTI: There are multiple, multiple
17 cases that --

18 THE COURT: Right. The language that is
19 typically given on this piling that I haven't
20 really seen in years is you should not pile
21 inference upon inference until the pile gets so
22 high that it tips over logically or the chain gets
23 so weak that it doesn't hold together anymore.

24 When you run through your inferences, check
25 the starting point and the ending point to make

1 sure they are still reasonable. I mean, I can give
2 that old language.

3 MR. YANNETTI: That's better.

4 THE COURT: All right.

5 MR. YANNETTI: We would prefer that.

6 THE COURT: All right. I haven't given that
7 in years, but I'll give that part of it.

8 MR. YANNETTI: Thank you.

9 THE COURT: And just to finish off that
10 paragraph, when the evidence tends equally to give
11 rise to either of two inconsistent propositions,
12 the Commonwealth has established neither
13 proposition. In order to convict the defendant,
14 you must find that all the evidence and reasonable
15 inferences that you have drawn, taken together,
16 prove that she is guilty beyond a reasonable doubt.

17 MR. YANNETTI: That's agreeable. Thank you.

18 THE COURT: So that rounds off that.

19 All right. So now we'll talk about the
20 indictments and the lesser includeds. So the
21 second degree murder instruction that was provided
22 by the Commonwealth and the one provided by the
23 defense are just a little bit different.

24 So if you take what is provided, there is one
25 section that the defense incorporates that I think

1 is missing from the instruction. And I'm going by
2 the SJC instructions. So when you get to the
3 second element of second degree murder, the
4 defendant intended to kill John O'Keefe, the second
5 element, first prong -- so the second element is
6 that the defendant intended to kill John O'Keefe.

7 As you can see, the second element has three
8 sub-elements. I'm reading from the Commonwealth's
9 proposed instructions which I shall call prongs.
10 And the Commonwealth satisfies its burden of proof
11 if it proves any one of the three prongs beyond a
12 reasonable doubt.

13 The first prong is that the defendant intended
14 to kill. Now, here, I am going to insert because
15 if you go back to the SJC instructions, I think it
16 is appropriate to go back to the instruction on
17 deliberate premeditation, which is the second
18 element of that, is the language that is offered
19 here by the defendant, that the defendant
20 consciously and purposefully intended to cause the
21 death of John O'Keefe.

22 So who is arguing this for the Commonwealth?
23 So, Ms. McLaughlin, does that make sense to you?

24 MS. MC LAUGHLIN: Yes, Your Honor.

25 THE COURT: Okay. So I am going to put that

1 in there. And the defense has the language of
2 accident there, but, Mr. Yannetti, that really goes
3 at the end. That goes -- as you'll see if you look
4 at the instruction on extreme atrocity or cruelty
5 where you have to go. So that will go at the end.
6 That will go after the third prong definition. I
7 will include the language that I think the
8 Commonwealth put in its request. It goes there.
9 If you have a reasonable doubt as to whether the
10 victim's death was accidental because the death was
11 caused by a negligent, careless or mistaken act of
12 the defendant or resulted from a cause separate
13 from the defendant's conduct, you may not find that
14 the Commonwealth has proved the defendant intended
15 to kill, intended to cause grievous bodily harm or
16 intended to do an act which, in the circumstances
17 known to the defendant, a reasonable person would
18 have known created a plain and strong likelihood.

19 Then you have, in deciding whether the
20 defendant intended to kill, intended to cause
21 grievous bodily harm or intended to do an act
22 which, in the circumstances known to the defendant,
23 a reasonable person would have known created a
24 plain and strong likelihood that death would
25 result, you may consider any credible evidence that

1 the defendant suffered from a mental impairment or
2 was affected by her consumption of alcohol or
3 drugs. That goes there.

4 MR. YANNETTI: That's fine, Your Honor.

5 THE COURT: Okay. Does that make sense to
6 you, too, McLaughlin?

7 MS. MC LAUGHLIN: Yes, Your Honor.

8 THE COURT: All right. Do you want both the
9 mental impairment or consumption of alcohol and
10 drugs? Do you want to just leave the whole generic
11 sentence?

12 MR. YANNETTI: I think we can, yes.

13 THE COURT: All right. Is there objection
14 from the Commonwealth on that?

15 MS. MC LAUGHLIN: I don't believe there has
16 been any evidence of mental impairment, but the
17 Commonwealth has no strong objection.

18 THE COURT: All right. There is no evidence
19 of drugs either. So do you want it to just be the
20 alcohol?

21 MS. MC LAUGHLIN: I'd suggest that would be
22 most in line with the evidence just to have
23 intoxication under alcohol.

24 THE COURT: All right. It makes sense to me,
25 Mr. Yannetti, if we focus just on the alcohol.

1 But, if you want mental impairment --

2 MR. YANNETTI: We would prefer it, Judge, just
3 to keep it in disjunctive --

4 THE COURT: All right. So I will think about
5 this one tonight. Okay? Then manslaughter while
6 operating motor vehicle under the influence of
7 liquor.

8 So Mr. Yannetti, you have included in the
9 language, what does it mean to be under the
10 influence of alcohol. That paragraph that starts
11 after the third element.

12 MR. YANNETTI: I'm sorry, Your Honor. Is
13 there a page number? I'm trying to --

14 THE COURT: Nine.

15 MR. YANNETTI: I have it. Yes.

16 THE COURT: All right. So you have included,
17 it means that a person has consumed enough alcohol
18 to reduce their mental clarity, self-control and
19 reflexes and thereby left them with a reduced
20 ability to drive safely.

21 Where is that language from?

22 MR. YANNETTI: This particular portion, Your
23 Honor, I thought was from the model instruction.
24 If I'm wrong, then we are fine with the model
25 instructions on this issue.

1 THE COURT: What does the Commonwealth say?

2 MS. MC LAUGHLIN: The Commonwealth's language
3 comes from the model jury instructions, I believe,
4 from the most recent 2024 instruction on
5 intoxication.

6 THE COURT: And that's not in the
7 Commonwealth's request, correct, that sentence that
8 I just read?

9 MS. MC LAUGHLIN: On page 5, we have the third
10 paragraph that is either a similar sentence or a
11 different sentence --

12 THE COURT: Yes. It's a similar sentence. A
13 person is under the influence of alcohol if they
14 have consumed enough alcohol to reduce their
15 ability to operate a motor vehicle safely by
16 decreasing their judgment, alertness and ability to
17 respond promptly and effectively to unexpected
18 occurrences.

19 So you don't need both, Mr. Yannetti.

20 MR. YANNETTI: I agree, Your Honor.

21 THE COURT: So you have both. So I'm just not
22 going to do that.

23 MR. YANNETTI: We are perfectly fine with
24 that.

25 THE COURT: Okay. So under the second theory,

1 so the Commonwealth is proposing the theory of the
2 .08 or greater. The evidence supports that. I'm
3 going to do that. So in the language from the
4 Commonwealth, the fourth element, then we talk
5 about wanton and reckless.

6 So for the fourth element, Mr. Yannetti, this
7 is where your language -- you have language for
8 five that actually belongs with four, I think. I'm
9 just going to find it.

10 Foreseeability. I think that belongs under
11 four, and that's where I'll have it. Okay?

12 MR. YANNETTI: Okay.

13 THE COURT: It belongs with four instead of
14 five. Do you agree with that?

15 MR. YANNETTI: I see the language now. Yes.
16 That's fine, Your Honor.

17 THE COURT: And do you agree with that
18 Ms. McLaughlin, it belongs under five?

19 MS. MC LAUGHLIN: It does.

20 THE COURT: All right. So I'll keep it. I
21 mean, it belongs under four. I'll keep it at
22 four and not have it at five where you put it
23 Mr. Yannetti, okay?

24 MR. YANNETTI: Understood.

25 THE COURT: I am going to give the lesser

1 included offense of involuntary manslaughter.

2 So there is additional language that I found
3 helpful in other cases when I discuss the language
4 and the cause of death. Remember, Ms. Read caused
5 John O'Keefe's death if her actions directly and
6 substantially set in motion the entire chain of
7 events that produced the death.

8 And then the next sentence is, the defendant's
9 act is the cause of death where, in a natural and
10 continuous sequence, results in death and without
11 which death would not have occurred.

12 Okay. So those two sentences I find go better
13 together, Mr. Yannetti. Is there any objection to
14 that?

15 MR. YANNETTI: No. I understand the Court's
16 point.

17 THE COURT: Okay. Any objection from the
18 Commonwealth?

19 MS. MC LAUGHLIN: No, Your Honor.

20 THE COURT: So, Mr. Yannetti, you have in here
21 a police officer's opinion about a driver's
22 sobriety like that testified to in this case. A
23 police officer didn't testify as to the defendant's
24 sobriety.

25 MR. YANNETTI: I think you're right.

1 THE COURT: Okay. So that paragraph that
2 begins with that, we'll just cross that out.

3 MR. YANNETTI: I think that's fine.

4 THE COURT: In this same instruction, I have
5 included a new paragraph, in deciding whether the
6 defendant knew or should have known her conduct
7 created a high degree of likelihood that
8 substantial harm would result to another, some
9 portion of the sentence that I'm going to think
10 about tonight, I have, you may consider any
11 credible evidence that the defendant suffered from
12 a mental impairment or was affected by her
13 consumption of alcohol.

14 MR. YANNETTI: Understood.

15 THE COURT: Any objection from the
16 Commonwealth on that?

17 MS. MC LAUGHLIN: No, Your Honor. That was
18 requested by the Commonwealth if you could consider
19 it.

20 THE COURT: Yes. So that will be in that last
21 paragraph with that offense, Mr. Yannetti.

22 Then the lesser-included offense, motor
23 vehicle homicide; felony OUI, liquor; and
24 negligence. I am going to give that. So I don't
25 have anything because the defense didn't --

1 MR. YANNETTI: We didn't request any lesser
2 included offenses.

3 THE COURT: So I didn't see anything that was
4 inappropriate about the Commonwealth's instruction,
5 Mr. Yannetti. I have added, I think, one line that
6 a person acts negligently when she fails to use due
7 care; that is, when they act in a way that a
8 reasonable person would not act. This can happen
9 either by doing something that a reasonable person
10 would not do under the circumstances or by failing
11 to do something that a reasonable person would do.
12 It's obviously the law.

13 MR. YANNETTI: Right. Yes. That's the law of
14 negligence, and I do understand the law of lesser
15 includeds.

16 THE COURT: Okay. Thank you. So leaving the
17 scene of an accident, resulting in death.

18 So what the Commonwealth has provided is
19 basically just the six elements with nothing
20 further. Pretty much one and two have already been
21 defined for the jury many times at this point.
22 Three, the defendant knowingly collided with
23 John O'Keefe. I think that's self-evident.

24 Ms. McLaughlin, why did you just give me the
25 six elements?

1 MS. MC LAUGHLIN: Your Honor, as you
2 suggested, the first two have been defined
3 extensively for the jury, and I believe the other
4 three, sorry, four prongs are self-evident. So
5 they don't need further instruction. I think it
6 would be sort of redundant or unnecessary to
7 explain to a juror, you know, failure to provide
8 documentation of, you know, registration and things
9 like that, does not warrant additional instruction.

10 THE COURT: Do you think they need to listen
11 to me any more than necessary, Mr. Yannetti?

12 MR. YANNETTI: Absolutely not. We are in
13 complete agreement, maybe for the first time in
14 this trial.

15 THE COURT: All right. So we will just leave
16 it. You've offered six, two pages or three pages
17 of definitions. So we won't do that.

18 MR. YANNETTI: Withdrawn.

19 THE COURT: Okay. Ms. McLaughlin, the use of
20 a dangerous weapon, a motor vehicle, I agree that's
21 an appropriate statement of the law. Tell me about
22 your request to have that.

23 MS. MC LAUGHLIN: Your Honor, the request goes
24 to the defendant's state of mind. Also, it would
25 go to any intent or any understanding of the jury

1 of what would be reckless conduct or negligent
2 conduct or intentional conduct if they understand
3 that the use of a motor vehicle to commit a crime
4 could be a per se dangerous weapon and then using
5 that to strike an individual, that could be used in
6 their deliberations in assessing the defendant's
7 intent or state of mind at the time of the
8 collision.

9 THE COURT: It seems to make sense,
10 Mr. Yannetti.

11 MR. YANNETTI: My position is it's
12 unnecessary, but I am going to waive argument on
13 that.

14 THE COURT: Okay. I think it makes sense.
15 I'll just leave it sort of as a catchall at the end
16 where it appears on the Commonwealth's request.

17 All right. So that's basically it. The first
18 and longest part maybe is the general instructions
19 in the beginning.

20 Anything specific from the Commonwealth that I
21 did not include?

22 MS. MC LAUGHLIN: Do you intend to give a
23 consciousness of guilt instruction?

24 THE COURT: Oh, I'll hear you on that. I
25 don't, but you can try and convince me if you want.

1 MS. MC LAUGHLIN: Your Honor, the Commonwealth
2 would put forth that there is sufficient evidence
3 that the defendant has engaged in actions that go
4 to her consciousness of guilt. There is an
5 inference that the defendant deleted portions of
6 the Ring video, a narrow area of Ring videos that
7 are missing. They begin with Mike Camerano picking
8 up his daughter at 11:00 a.m. They resume at 5:07
9 where the defendant backs her vehicle into John
10 O'Keefe's. Then there is a period missing where
11 the defendant shows the broken taillight to
12 Jennifer McCabe and Kerry Roberts, and then the
13 video resumes again when the victim's niece gets
14 picked up. But not only the missing Ring videos
15 but also the defendant's behavior.

16 What began as testified to from the Dighton
17 police officer, the defendant's father called the
18 Dighton Police Department and requested a ride to
19 the Samaritan Hospital due to the weather
20 conditions. He then drove himself to Brockton to
21 pick up the defendant and perhaps bring her home.

22 What they do in the middle of a blizzard is
23 now -- Dighton to Brockton, you know, is half the
24 distance. Then they travel further, all the way
25 back to Canton to retrieve the murder weapon, along

1 with the defendant's brother. They all meet at the
2 victim's residence to remove the murder vehicle and
3 bring it all the way down to Dighton,
4 Massachusetts. That would go to concealing
5 evidence and intention.

6 There is also evidence of the defendant's
7 statements going to her consciousness of guilt
8 within hours after John's death. The victim's
9 sister-in-law calls the defendant, reaches out,
10 wants to make sure she's okay. The defendant says
11 to her, I only have to remember the bad times.
12 You'll likely never hear from me again.

13 Erin O'Keefe testified she tells the
14 defendant, of course we are. We're friends. She's
15 never heard from the defendant since.

16 So I think that goes to the defendant's state
17 of mind in the hours after the death. But, in
18 addition to the Ring video, I think there is strong
19 evidence of consciousness of guilt to move the
20 murder vehicle within hours of John's death.

21 THE COURT: Mr. Yannetti?

22 MR. YANNETTI: Well, first of all, with regard
23 to the Ring video, Trooper Guarino, who was
24 certainly no friend of the defense in this case,
25 testified that there was zero evidence that

1 Karen Read had access or had accessed anything on
2 that computer. And the Commonwealth utterly failed
3 to prove that she had any access to delete
4 anything. So I would say that that is a red
5 herring.

6 This is the one case, I think, a very rare
7 case, where there is much more consciousness of
8 guilt evidence with regard to the Commonwealth's
9 own witnesses than there is with regard to the
10 defendant in a criminal case.

11 And, you know, with regard to the other
12 arguments, I'm having trouble following what --

13 THE COURT: So moving the car extra distance
14 during the blizzard. That part of the argument
15 that the Commonwealth made.

16 MR. YANNETTI: I mean, the evidence was that
17 my client maintained a residence in Mansfield. She
18 didn't live at One Meadows. She spent time there.
19 So, you know, to say that moving her car to her own
20 home where the police later found it because she
21 was there and picked up the phone and said that the
22 police were coming and she stayed there and they
23 were able to seize the car, that does not rise to
24 the level of consciousness of guilt, Your Honor.

25 MS. MC LAUGHLIN: Your Honor, the defendant

1 actually moved her vehicle to her parents'
2 residence. So that -- not her residence in
3 Mansfield, which would further support an inference
4 that she was concealing evidence.

5 MR. YANNETTI: Right. Well, even if it's her
6 parents' house, Your Honor, again, if she is no
7 longer dating John O'Keefe because he's passed
8 away, then it makes sense for her to have her
9 vehicle at her parents' house or her own house.
10 And, again, it does not rise to the level of
11 consciousness of guilt.

12 MS. MC LAUGHLIN: Nor does she stay at the
13 home of her boyfriend to grieve with the family who
14 just lost John. She quickly comes back to the
15 house, brings her family members, goes upstairs for
16 about 20 minutes by herself with her father and
17 quickly leaves the residence.

18 MR. YANNETTI: Again, there is no evidence
19 that she did anything upstairs or that she had
20 access or the ability to change anything.

21 THE COURT: It's a little bit more robust
22 argument than I expected from the Commonwealth. So
23 I'm going to think about this. I'll let you know
24 before closing argument tomorrow. And, if I don't
25 instruct on it, the Commonwealth is still able to

1 testify to it.

2 Witness pretrial preparation. That came out
3 on both sides. I'm going to give the second
4 alternative.

5 Mr. Yannetti, I'll hear you on your
6 instructions.

7 MR. YANNETTI: So I believe that we've covered
8 the vast majority of it, Your Honor.

9 THE COURT: I'm giving you an opportunity to
10 argue the *Bowden* now just so you can make a record.

11 MR. YANNETTI: Oh, sure. All right. Let me
12 just pull up that. If I may just have a moment,
13 Judge? I put that document away once the Court
14 said you weren't going to give it.

15 Okay. Yeah. I mean, with regard to the
16 *Bowden* evidence or instruction, Your Honor, you
17 know, having done this for as long as I have, it is
18 requested a lot and not given, you know, a large
19 percentage of the time. And I do recognize that
20 the Court has discretion to give it or not give it
21 and that we also can argue this in closing
22 argument, anyway.

23 THE COURT: Right.

24 MR. YANNETTI: But, you know, I think that if
25 there is any case where a *Bowden* instruction should

1 be given, it's this one. You know, we start with
2 the conflict of interest that existed at the start
3 of this case and the fact that Michael Proctor was
4 allowed to not only continue with the case but to
5 be the lead investigator or case officer during the
6 whole pendency of the case despite his obvious
7 conflict of interest with the Albert family.

8 We then move to the fact that, you know, he
9 never as a lead investigator went into the house at
10 34 Fairview. He never looked around. He never
11 checked for any signs of struggle. He never
12 checked out the basement. He never looked for a
13 weapon that could have been used to do the damage
14 that was done to the back of John O'Keefe's head.
15 He was never once asked about Chloe, the German
16 Shepherd, despite the obvious injuries to John
17 O'Keefe's arm.

18 With regard to the witnesses, Your Honor,
19 witnesses were interviewed in a very relaxed manner
20 at their own homes. There was testimony that they
21 were interviewed together, that they were not
22 separated out on numerous occasions, Brian Albert,
23 Nicole Albert, Jen McCabe, Matt McCabe, all
24 interviewed en masse. Later, everybody in that
25 group except for Nicole Albert was also interviewed

1 at the same time. Chris and Julie Albert were
2 interviewed together.

3 And then we have all this, you know, evidence,
4 the way it was handled or, I should say,
5 mishandled, you know, starting with the leaf
6 blowers and the Solo cups and things being pictured
7 on the floor of garages, not being properly handled
8 and the fact that there are no chain of custody
9 logs for the evidence before March of 2022.

10 So I just highlight those, Your Honor, as
11 examples. I believe there's more, but that's the
12 record that I would make.

13 THE COURT: Okay. So are you satisfied you've
14 made a record on this?

15 MR. YANNETTI: I am. I think so.

16 THE COURT: But I did include some specific
17 bias language that I read to you early on that sort
18 of ties into this.

19 MR. YANNETTI: Understood, Your Honor.

20 THE COURT: Okay. So nothing else?

21 MR. YANNETTI: That's it.

22 MS. MC LAUGHLIN: I have one question. The
23 defendant requested a missing witness instruction.

24 THE COURT: Yes. You're not --

25 MR. YANNETTI: Oh, I've withdrawn that. That

1 was crafted as the trial was ongoing. I didn't
2 know if we were going to have that or not.

3 THE COURT: Thank you for bringing that up,
4 Ms. McLaughlin.

5 MR. YANNETTI: Right. I agree that it's not
6 appropriate in this case.

7 THE COURT: All right. So I will see you
8 tomorrow morning.

9 MR. YANNETTI: My only question, Your Honor,
10 is that -- I haven't tried before this Court
11 before, I don't think. Do you typically send a
12 copy of your instructions to counsel prior to --

13 THE COURT: If I haven't finished, I expect
14 I'll be up late tonight and will have it finished
15 in time for you tomorrow.

16 MR. YANNETTI: Understood. Thank you.

17 THE COURT: I do give two, maybe three copies
18 to the jury afterwards.

19 THE CLERK: There was some question as to the
20 use of chalks --

21 THE COURT: Can we focus on this? So does the
22 defense intend to use chalks?

23 MR. YANNETTI: I'm going to defer to my co-
24 counsel on that.

25 MR. JACKSON: Two.

1 THE COURT: What do you intend to use?

2 MR. JACKSON: Photographs of the vehicle and
3 photographs of the taillight So two side-by-side
4 photographs of the taillight that are in evidence
5 and photographs of the vehicle or still shots of
6 the vehicle that are in evidence.

7 THE COURT: Okay.

8 MR. JACKSON: And that's the extent of it.

9 THE COURT: Okay. Does the Commonwealth have
10 any objection?

11 MS. MC LAUGHLIN: No, but the Commonwealth
12 also intends to use chalks.

13 THE COURT: What do you intend to use?

14 MS. MC LAUGHLIN: Also side-by-side
15 photographs in video but also a timeline that
16 summarizes text messages and voicemails and
17 significant events from January 28th through
18 January 29th.

19 THE COURT: Okay.

20 MR. JACKSON: Your Honor, we'd request to see
21 that in advance.

22 THE COURT: You should both exchange them.
23 Okay?

24 MR. JACKSON: Right.

25 Court Order: Jurors or Juror Issues

Court Order: Jurors or Juror Issues

THE CLERK: Okay.

MR. JACKSON: Your Honor, when is that done?

At what point?

THE COURT: At the end of the instruction, before I give the instruction on -- the SJC instruction.

MR. JACKSON: Got it.

MR. YANNETTI: Can I ask a question?

THE COURT: Yes.

1 MR. YANNETTI: Do you pick a foreperson, Your
2 Honor?

3 THE COURT: Yes.

4 MR. YANNETTI: You do. Sometimes it's done by
5 lottery. I just wanted to inquire.

6 THE COURT: In Massachusetts, it's supposed to
7 be chosen by the judge.

8 MR. YANNETTI: I've seen it both ways, but
9 thank you.

10 THE COURT: I know. All right. Anything
11 else?

12 MR. JACKSON: I need to learn more about
13 Massachusetts law.

14 THE COURT: All right. Thank you. We'll see
15 you tomorrow.

16 (Whereupon, the Court adjourned.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 36-3 to 36-215, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 16th day of February, 2025.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist